SUPREME COURT OF THE UNITED STATES

No. 241.

THE HOPKINS & DICKINSON MANUFACTURING COMPANY, APPELLANT,

vs.

P. AND F. CORBIN, F. H. NORTH, AND CHARLES PECK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

INDEX.

	Original.	Print.
Appeal and allowance	1	1
Citation	2	1
Service of citation	3	1
Return of circuit court	4	2
Bill of complaint	5	2
Answer	11	5
Replication	18	8
Complainants' evidence	19	9
Exhibit No. 1	19	9
Exhibit No. 2	25	11
Exhibit Brockseiper & Sargent patent	38	18
Exhibit English patent	43	20
H. B. Renwick, witness	56	25
Cross-examination	60	27
Respondents' evidence	62	28
Geo. Voll, witness	65	28
Cross-examination	68	31
Geo. McGregor	72	33
Cross-examination	80	36
E. S. Renwick	83	38
Exhibit A	46	21
Exhibit D	31	15
Stipulation as to evidence	98	45
Opinion	99	45
Decree	110	49
Authentication	111	49

1 United States circuit court, district of Connecticut. In equity.

THE HOPKINS AND DICKINSON MANUFACTURING Company
vs.
P. AND F. CORBIN ET AL.

And now the above-named complainant after the final decree herein, entered on the 1st day of July, 1878, comes and shows to this court that the said final decree involves the construction of the acts of Congress concerning patents for useful inventions, and it appearing to this court that it is reasonable to allow an appeal herein to the Supreme Court of the United States, the same is hereby allowed, and the appellant is ordered to serve the usual citation according to law.

Dated the 29th day of July, 1878.

N. SHIPMAN,
One of the Judges of the Circuit Court for the District of Conn.

2 United States circuit court, district of Connecticut. In equity.

THE HOPKINS AND DICKINSON MANUFACTURING Company
vs.
P. AND F. CORBIN ET AL.

By the honorable Nathaniel Shipman, one of the judges of the circuit court of the United States for the district of Connecticut, second circuit, to P. and F. Corbin, Frederick H. North, and Charles Peck.

Whereas the Hopkins and Dickinson Manufacturing Company, complainants herein, have lately appealed to the Supreme Court of the United States from a final decree lately rendered and entered in this court in the above cause, made in favor of you, the said P. and F. Corbin, Frederick H. North, and Charles Peck, and have filed the
3 security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1879, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Hartford, in the district of Connecticut, in the second circuit, this 29th day of July, 1878.

N. SHIPMAN,
One of the Judges of the Circuit Court for the District of Conn.

UNITED STATES OF AMERICA,
District of Connecticut, Hartford County, ss:

NEW BRITAIN, *August* 12, '78.

Then and there I served the within citation and order by delivering to and leaving with Charles Peck, the secretary of the within-named P. & F. Corbin, a true and attested copy hereof, and I left in the hands of Charles F. Corbin at the last usual place of abode of the within-named Frederick H. North a like copy, and I also delivered to and left with Charles Peck, within-named, a like copy.

Attest:

JOS. D. BATES,
U. S. Marshal.

Fees: Services, 6.00; copies, &c., 3.00; travel, 4.32—13.32.

REG. 241—1

4 The return of the judges of the circuit court of the United States for the district of Connecticut to the foregoing appeal.

The record of the said cause, including the pleadings, proceedings, evidence, opinion, and decree, whereof mention is therein made, follow in these words, viz:

THE HOPKINS & DICKINSON MANUFACTURING Company
vs.
P. & F. CORBIN, F. H. NORTH, & CHARLES PECK. } In equity.

Be it remembered, that on the 12th day of November, A. D. 1875, C. F. Blake, the attorney for the complainants, filed in court his bill of complaint in the following words, viz:

5 *Bill against P. & F. Corbin et al.*

United States circuit court, district of Connecticut. In equity.

THE HOPKINS & DICKINSON MANUFACTURING Company
vs.
P. AND F. CORBIN, FREDERICK H. NORTH, AND Charles Peck.

To the honorable the judges of said court:

The Hopkins & Dickinson Manufacturing Company, a corporation organized and doing business under and by virtue of the laws of the State of New York, and domiciled at the city of New York, in said State, and a citizen thereof, brings this its bill of complaint against P. and F. Corbin, a corporation organized and doing business under and by virtue of the laws of the State of Connecticut, and domiciled at the town of New Britain, in said State, and a citizen thereof, and Frederick H. North, president of said corporation, and Charles Peck, secretary of said corporation, both residents of the said town of New Britain and citizens of the State of Connecticut, and thereupon complains and says:

6 That heretofore George McGregor and George Voll, of Cincinnati, Ohio, became and were the joint, original, and first inventors of a new and useful improvement in sash locks. That they thereupon made application to the Commissioner of Patents for letters patent therefor, and thereafter due proceedings were had, and all the requirements of the statutes in such case made and provided were complied with, and the said commissioner caused letters patent to be made out and delivered to the said McGregor and said Voll for the said invention, which was duly signed and sealed, and dated the 30th day of March, 1869, and grant and secure unto said McGregor and Voll, and their heirs, executors, or assigns, for the term of seventeen years from the date thereof, sole and exclusive right and liberty of making, using, and vending the said invention.

And your orators further show unto your honors that thereafter, by a duly drawn, executed, delivered, and recorded deed of assignment, the said McGregor and said Voll assigned, sold, and set over unto William A. Hopkins and F. Z. Dickinson all their right and title and interest in and to the said letters patent and the invention thereby se-

cured, as by said deed or a duly certified copy thereof, in court to be produced, will more fully appear.

And your orators further show unto your honors that thereafter, for good and lawful cause, the said McGregor and said Voll, by and with the consent and allowance of your orators, surrendered said original letters patent, and petitioned that the same should be reissued on an amended specification and claims; that due proceedings were had on such petition, and all the requirements of the statute in such cases made and provided were complied with, and on the 21st day of Janu-
7 ary, 1873, the said commissioner caused new and amended letters patent to be made out and delivered unto the said William A. Hopkins and F. Z. Dickinson, which said reissue letters patent are dated on the day and year last above written, and are duly signed and sealed, and are for the same invention as that described in said original letters patent, and grant and secure unto the said Hopkins and the said Dickinson, and their heirs, successors, and assigns, for the residue of the said original term, the sole and exclusive right and liberty of making, using, and vending the said invention.

And your orators further show unto your honors that thereafter, by a duly drawn, executed, delivered, and recorded deed of assignment, the said William A. Hopkins and F. Z. Dickinson assigned, sold, and set over unto the said Hopkins & Dickinson Manufacturing Company, the complainants herein, all their right, title, and interest in and to the said reissue letters patent, and the invention thereby secured, as by said deed of assignment or a duly certified copy thereof, in court to be produced, will more fully appear.

And your orators further show unto your honors that thereafter, for good and lawful cause, the said Hopkins & Dickinson Manufacturing Company surrendered said reissue letters patent aforesaid, and petitioned that the same should be reissued on an amended specification and claims, that due proceedings were had on said petition, and all the requirements of the statute in such case made and provided were complied with, and on the 11th day of October, 1875, the said Commissioner caused new and amended letters patent to be made out and de-
8 livered unto your orators, the said Hopkins & Dickinson Manufacturing Company, which said reissue is dated the day and year last above written, is duly signed and sealed, is numbered reissue 6,693, and is for the same invention as that described in said original letters patent, and grants and secures unto your orator, its successors or assigns, for the residue of said original term, the sole and exclusive right and liberty of making, using, and vending the said invention, that is to say, "improved sash locks," as by said reissue letters patent, or a duly certified copy thereof, in court to be produced, will more fully appear.

And your orators aver, and charge the fact to be, that the said McGregor and the said Voll were the joint, original, and first inventors of the said invention described and claimed in said last-named reissue letter patent, and that the sole and exclusive title to the same is now vested in your orators.

And your orators further show unto your honors that the said invention described and claimed in and by said reissue letters patent number 6693 is of great benefit and advantage to your orators and to the public, and that your orators have spent large sums of money in and about said invention, and in attempting to make the same of benefit and advantage to themselves, and in attempting to introduce the same into public and general use, and that they have done so; and that they would, but for the wrongful and unlawful infringe-

ment by the defendants herein and others, make and receive large gains and profits therefrom, justly their due, but which are now received by the defendants herein.

Yet the said defendants, though well knowing the premises and the sole and exclusive rights of your orators therein, and though notified of their said infringement and requested to desist therefrom, have
9 not desisted; but the said defendant corporation, and said Frederick H. North, as president thereof, and the said Charles Peck, as secretary thereof, have jointly made, used and sold, within the district of Connecticut and elsewhere, since the 11th day of October, 1875, large quantities of sash locks embodying the invention described in said reissue letters patent No. 6693; and your orators have reason to fear, and do fear, and the said defendant corporation, and said North and said Peck will in future jointly make, use and sell other large quantities of sash locks embodying the said invention, to the great and irreparable loss and injury of your orators, and are thereby depriving your orators of large gains and profits justly their due, but which are now received by the defendants herein, and the defendants refuse to pay the same over to your orators.

And your orators further show unto your honors, and charge the fact to be, that they are able, willing and anxious to supply all the reasonable demand of the market for such improved sash locks.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereinafter prayed, and may under oath, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the premises; and that the said defendants may answer the premises, and may be decreed to account for and pay over to your orators all gains and profits realized from their unlawful making, using or vending sash locks in infringement of the said reissue letters patent No. 6693, and also the damage suffered by your orators thereby, to be assessed as by statute provided; and may
10 be restrained by a preliminary injunction to be issued out of this honorable court, or by one of your honors, as by statute provided, against the said defendants and each of them, their officers, agents, attorneys, clerks, servants and employees, enjoining and restraining them from making, using or vending any sash locks embracing said improvements, or any substantial part thereof, described and claimed in said reissue number 6693; and also the writ of perpetual injunction so issued and so restraining and enjoining the said defendants and each of them, their officers, agents, attorneys, clerks, servants and employees, perpetually, and for such other and further relief in the premises as the nature of the case may require, and to your honors may seem meet.

May it please your honors to grant to your orators not only the writs of preliminary injunction, conformable to the prayer of this bill, but also the writs of subpœna to be directed to the said defendants, P. and F. Corbin, Frederick H. North, and Charles Peck, commanding them at a certain time and under a certain penalty, therein to be limited, personally to be and appear in this honorable court, and then and there to answer the premises, and to do and receive what to your honors shall seem just in the premises.

And, as in duty bound, will ever pray, &c.

HOPKINS & DICKINSON MAN'F'G CO.,
By F. Z. DICKINSON, *Treasurer.*

CHARLES F. BLAKE,
Solicitor and Counsel with Complainants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Frederick Z. Dickinson, being duly sworn, says: I am treasurer of the complainant corporation herein. I have read the foregoing bill of complaint subscribed by me, and know the contents thereof, and that the same is true, except such matters as are therein mentioned on information and belief, and as to such matters I verily believe it to be true.

FREDERICK Z. DICKINSON.

Subscribed and sworn to before me this 11th day of November, 1875.
[SEAL.] JOHN A. SHIELDS,
U. S. Commissioner, Southern District of New York.

And on the 9th day of Feb., 1876, the def'ts having been duly cited to appear, & having appeared by Mitchell & Hungerford & O. H. Platt, their solicitors, filed in court their answer as follows, viz:

The answer of P. & F. Corbin and Frederick H. North and Charles Peck to the bill of complaint of the Hopkins & Dickinson Manufacturing Company.

The defendants, reserving all right of exception to the manifold errors, imperfections, and insufficiencies of said bill, for answer thereto, or unto so much thereof as they are advised it is material for them to make answer unto, answering, say:

That as to the allegations of said bill averring the issuing of letters patent of George McGregor and George Voll under date 30th day of March, 1869, and the assignment of said letters patent to William A. Hopkins and F. Z. Dickinson, and the reissue of said letters pat-
12 ent to the last-named persons on the 21st day of January, 1873, and the assignment of said reissued letters patent to the complainants, and the further reissue of said letters patent to the complainants under date of October 11th, 1875, and that the complainants are now vested with the sole and exclusive title thereto, the defendants have no knowledge, except as they are informed by said bill, and they therefore leave the complainant to make such proof thereof as it may be advised is material or necessary; nor have the defendants any knowledge, save as informed in said bill, whether the invention described and claimed in said letters patent is of great benefit or advantage to the complainants or to the public; nor whether the complainants have spent large or any sums of money in or about said invention, or in attempting to make the same profitable to themselves, or in attempting to introduce the same into use; nor whether they would in any event receive large gains or profits therefrom; and they leave the complainants to make such proof of the several matters aforesaid as they may be advised is material.

The defendants, further answering, deny, upon information and belief, that said original letters patent or said first reissued letters patent were either of them surrendered for good and lawful causes, as alleged in said bill, or for any good or lawful cause whatever, but aver that the same were surrendered for the fraudulent purpose of including in the reissued letters patent granted in place of them and each of them more and other matters and things than those of which the said McGregor

& Voll were jointly the original and first inventors, and more and others than they were entitled to include or did include in said original letters patent; and that said reissued letters patent upon which
13 said bill of complaint is founded does include and describe things and inventions not included and described in said original letters patent, and which upon the face of said letters patent clearly appear to be different from the inventions described or shown or suggested in said original letters patent as the joint invention of said Voll & McGregor, and that said reissued letters patent are null and void.

The defendants, further answering, upon information and belief, deny that they have made, used, or sold in the district of Connecticut or elsewhere, since the 11th day of October, 1875, or at any time, any such locks embodying the inventions described in reissued letters patent upon which the complainants' bill is founded, or that they intend to make, use, or sell such locks embodying said invention.

The defendants, further answering, deny that the said Voll & McGregor were jointly the original and first inventors of the supposed improvements in sash locks described in said second reissue, bearing date October 11th, 1875.

And upon information and belief aver that the said supposed improvements in said reissued letters patent described, and all substantial and material parts thereof, were, prior to any alleged invention thereof by the said Voll & McGregor, described in the following letters patent and printed publications, to wit:

English letters patent to John Loacle, No. 11568, bearing date Aug. 6, 1847, for fastenings for windows, &c.

English letters patent to William Thomas Weston, No. 388, bearing date August 1, 1863.

14 Rejected application of George Voll for improvement in sash locks, filed in the United States Patent Office, bearing date the day of 186 .

And also said supposed invention was, long prior to the alleged invention thereof by said Voll & McGregor, known to and in use by the following named persons, and at the places affixed to their names respectively, to wit:

George Voll, of Cincinnati, Ohio, at said Cincinnati.

George McGr gor, of Cincinnati, Ohio, at said Cincinnati.

And defendants, further answering, say that if the alleged improvement in sash locks was invented by the said Voll & McGregor, or either of them, then the same was invented wholly and solely by said George Voll, who applied for letters patent for said invention on the day of , A. D. 186 , and having been rejected, did not, within six months from the 8th day of July, 1870, being the date of the "Act to revise, consolidate, and amend the statutes relating to patents and copyrights," renew his said application or file a new application, but abandoned the said alleged invention to the public.

The defendants, further answering, say that said reissued letters patent, No. 6693, are void in law, because the same contains the following new matter not contained in the said original letters patent, to wit:

"Prior to the date of this invention many kinds of sash locks have been used or described, among them one described in English letters patent, dated July 26, 1843, No. 9614, and another in letters patent of the United States, dated May 11, 1858.

15 "In the former of these a bolt was secured to the vibrating lock lever in such a manner that it could be moved to and fro in the line of the lever, and in the latter a bolt moving perpendicularly to

the lock lever was mounted thereon. In both, the bolts, when shot, prevented the lock lever from being swung from the locking position until the bolt was retracted from a nick depression or socket formed in the striking-plate or hook; both prevented the lock lever from being swung by means of a knife or thin piece of metal inserted from the outside between the sashes.

"The improvement herein described upon these sash fasteners consists in arranging the catch segment, by which the bolt shoots upon the base plate on which the lock lever is pivoted.

"Window sashes shrink or wear; so do the wooden grooves in which they slide. Moreover, the sashes can never be a tight fit in the grooves, and consequently it is difficult to keep the base plate and its lock lever and the striking plate or hook always in the same relative position. Therefore the bolt cannot always shoot into its socket when the latter is formed on the hook or striking plate. When the socket is on the same plate upon which the lever is mounted this difficulty is avoided. In the English patent before referred to an attempt has been made to avoid this difficulty by forming several depressions on the hook, so that the bolt may enter one where it cannot be brought opposite another." And also the following, to wit:

"This result does not depend upon any special construction or form of the lever, or special form or construction of bolt, or manner of
16 mounting the bolt on the lever, but upon the construction in which the lever carrying the bolt is pivoted upon the same base plate that supports the catch segment for the bolt."

Which new matter not only was not contained in said original letters patent, but was introduced in said reissue for the false and fraudulent purpose of inducing the public to believe that the said Voll and McGregor were jointly the inventors of that improvement in sash fasteners, which consists in arranging and locating the catch segment or other device "by which the bolt shoots" in locking upon the base plate upon which the lock lever is pivoted instead of upon the striking plate or hook, irrespective of the form or construction of the lever, or of the bolt, or of the manner of mounting the bolt.

Whereas the complainants well knew that said method of organizing the various parts of a sash lock was invented by said George Voll long before the date of any joint invention of the said Voll and McGregor, and that the insertion of said new matter would deceive the public as to the true scope of the improvement made by the latter and described in said letters patent.

Defendants, further answering, say that if any difference whatever exists between the contrivance described as the invention of the said Voll and McGregor and the prior contrivance invented by the said George Voll, and described in his said rejected application, then such difference is wholly immaterial to the principle or mode of operation embodied in said joint invention, and is due to the skill of a mechanic and unpatentable.

And the defendants deny having done any wrong or injury to said complainants, or that they have infringed or invaded any of their rights; and the defendants respectfully submit to this court that the
17 said complainants have no right to any further answer to the said bill of complaint, or any part thereof, than is above given, and no right to any injunction or relief prayed for in said bill; and they deny that any matter or thing in said complainants' bill contained, and not herein and hereby well and sufficiently answered unto or denied, is true to the knowledge and belief of defendants, and pray to be hence

dismissed, with their reasonable costs in this behalf most wrongfully sustained.

P. & F. CORBIN.
By CHARLES PECK, *Sec'y.*
F. H. NORTH.
CHARLES PECK.

MITCHELL & HUNGERFORD,
Solicitors and of Counsel.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

Charles Peck, being duly sworn, doth depose and say that he is one of the defendants, and that he is the secretary of the corporation of P. & F. Corbin, the corporation named as defendants in the above answer, and that by means of his said office he has acquired and possesses particular knowledge of the matters stated in said answer; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

CHARLES PECK.

Subscribed and sworn to before me this 9th day of February, A. D. 1876.

EDWIN E. MARVIN,
U. S. Commissioner.

18 And on the 4th day of March, A. D. 1876, the complainants filed in court their replication to the answer in the words following, viz:

Replication to P. & F. Corbin et al.

The replication of Hopkins & Dickinson Manufacturing Company, complainants, to the answer of P. & F. Corbin et als., defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

New York, March 4, 1876.

CHARLES F. BLAKE,
Solicitor and Counsel for Complainant.

And on the 29th day of September, A. D. 1877, the evidence of both parties to said cause was filed in court, as follows, viz:

19 *Complainant's Exhibit No. 1.—E. G. T., Ex'r.*

The U. S. Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted Hopkins & Dickinson Manufacturing Company, assignees by mesne assts. of George McGregor and George Voll, dated October 11th, 1875, No. 6693, for "Imp't in sash locks."

In testimony whereof, I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twelfth day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

[SEAL.]

ELLIS SPEAR,
Acting Comm'r.

No. 6693. Reissue.

The United States of America, to all to whom these presents shall come:

Whereas George McGregor and George Voll, of Cincinnati, Ohio, assignors by mesne assignments to the Hopkins & Dickinson Manufacturing Company, of New York City, said assignee having presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in sash locks (for which letters patent were issued to McGregor & Voll, dated March 30, 1869; the same surrendered, and new letters issued to Hopkins & Dickinson, dated January 21, 1873; which last letters having been surrendered, the same have been canceled, and new letters ordered to issue to said assignee on an amended specification), a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and having complied with the various requirements of law in such cases made and provided; and

20

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Hopkins & Dickinson Manufacturing Company, its successors or assigns, for the term of seventeen years from the thirtieth day of March, one thousand eight hundred and sixty nine, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the one hundredth.

[SEAL.]

B. R. COWEN,
Acting Secretary of the Interior.

Countersigned:
R. H. DUELL,
Commissioner of Patents.

21 UNITED STATES PATENT OFFICE:

George McGregor and George Voll, of Cincinnati, Ohio, assignors, by mesne assignments, to the Hopkins & Dickinson Manufacturing Company, of New York City. Improvement in sash-locks.

Specification forming part of letters patent No. 88318, dated March 30, 1869; reissue No. 5253, dated January 21, 1873; reissue No. 6693, dated October 11, 1875; application filed August 10, 1875.

To all whom it may concern:

Be it known that George McGregor and George Voll, of Cincinnati, Ohio, did invent certain new and useful improvements in sash-fasteners; and that the following, taken in connection with the drawings, is a full, clear, and exact description thereof:

In the drawings figure 1 is a plan or top view of the contrivance as a whole. Fig. 2 is a vertical section through the same as applied to a window-sash. Fig. 3 is a plan of the bottom of the vibrating lock-lever and its bolt and spring. Fig. 4 is a perspective of the base plate; and Fig. 5 a perspective view of the hook or striking plate.

Prior to the date of this invention many kinds of sash-locks have been used or described. Among them one described in English letters patent, dated July 26, 1843, No. 9614, and another in letters patent of the United States, dated May 11, 1858.

In the former of these a bolt was secured to the vibrating lock-
22 lever in such a manner that it could be moved to and fro in the line of the lever; and in the latter a bolt moving perpendicularly to the lock-lever was mounted thereon. In both, the bolts, when shot, prevented the lock-lever from being swung from the locking position until the bolt was retracted from a nick depression or socket formed in the striking plate or hook. Both prevented the lock-lever from being swung by means of a knife, or thin piece of metal, inserted from the outside between the sashes.

The improvement herein described upon these sash fasteners consists in arranging the catch-segment, by which the bolt shoots upon the base plate on which the lock lever is pivoted.

Window-sashes shrink or wear. So do the wooden grooves in which they slide. Moreover, the sashes can never be a tight fit in the grooves, and consequently it is difficult to keep the base-plate and its lock-lever and the striking plate or hook always in the same relative position. Therefore the bolt cannot always shoot into its socket when the latter is formed on the hook or striking plate. When the socket is on the same plate upon which the lever is mounted this difficulty is avoided. In the English patent before referred to an attempt has been made to avoid this difficulty by forming several depressions on the hook, so that the bolt may enter one where it cannot be brought opposite another.

In the drawings the lock-lever is represented at E G. A lip, *i*, may, for greater security and in order to draw the sash-rails together, be formed on one end thereof. On the lock-lever, and so mounted as to slide in the line thereof, is the bolt F, with its knob or handle, and a spring, *d*, which shoots it. This lock-lever is mounted upon the base plate C,
23 which is provided with a hollow stud, *a*. This stud is entered into a hole in the lock-lever, and a rivet, *b*, secures the lever to the base-plate, the result being that the lever is attached to, but may be turned on, the base-plate. A projection, *c*, rises up from the base-plate. When the lever is at right angles with the position shown in

Figs. 1 and 2, the end of the bolt rests against the vertical face. When the lever is shoved into the position shown in Figs. 1 and 2, then the end of the bolt is shot past the end of the projection toward the pivot of the lever by its spring, and when it is shot the lock-lever is fastened, and cannot be turned until the bolt is retracted. The catch-segment, which receives the bolt when shot, being, as thus described, on the base-plate upon which the lever is pivoted, it is evident that the bolt, which is mounted upon the lever, will always shoot by the segment when the lever is in the proper position, and that no derangement of the relative position of the two sashes can affect this result. This result does not depend upon any special construction or form of the lever, or special form or construction of the bolt, or manner of mounting the bolt on the lever, but upon the construction in which the lever carrying the bolt is pivoted upon the same base-plate that supports the catch-segment for the bolt.

In order to render the manipulation more convenient, there is applied to the contrivance a coiled spring, *e*, one end of which, *f*, bears against a stud, *h*, in a cavity formed in the lever, and the other end, *g*, of which bears against one end of the projection, *c*. This spring always tends to throw the lever away from its locked position. Consequently,
24 when the bolt is pulled out of its place behind the catch segment, this spring throws the lever into a position at right angles to that represented in Figs. 1 and 2, and holds it there.

What is claimed as the invention of George McGregor and George Voll is—

A vibrating lever, provided with a bolt, in combination with a striking-plate or hook and with a catch-segment, behind which the bolt can pass, formed upon the plate upon which the lever is pivoted, the whole constituting a sash-fastener, and the parts enumerated in the claim being and operating substantially as specified.

Witness the hand of the said Hopkins & Dickinson Manufacturing Company, by Frederick Z. Dickinson, its treasurer, duly thereunto authorized, this 6th day of August, 1875.

HOPKINS & DICKINSON M'F'G CO.,
By F. Z. DICKINSON, *Treasurer*.

Witnesses:
BERN. T. VETTERLEIN.
PHILLIPS ABBOTT.

25 *Complainant's Exhibit No. 2.—E. G. T., Ex'r.*

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of all assignments under letters patent granted McGregor & Voll, dated March 30th, 1869, No. 88318.

In testimony whereof, I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this sixteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the one hundredth.

[L. S.]

ELLIS SPEAR,
Acting Commissioner.

[5 cent int. rev. stamp. Canceled.]

Whereas George McGregor and George Voll, both of Cincinnati, Ham-

ilton County, Ohio, did obtain letters patent of the United States for improvement on sash locks, bearing date March 30th, 1869, No. 88318;

And whereas George Voll, being the owner of an undivided one-half interest in said patent, bearing date March 30th, 1869, No. 88318, is desirous of disposing of his interest in the manufacture and sale of said patent No. 88318;

And whereas M. Greenwood & Co., of Cincinnati, Ohio, are desirous of obtaining the exclusive right of said George Voll in the manu-
26 facture and sale of said patent improvement in sash locks, dated March 30th, 1869, No. 88318:

Now, therefore, I, George Voll, of Cincinnati, Ohio, do bargain, convey, and sell to M. Greenwood & Co., of Cincinnati, Ohio, my entire right to manufacture, use, and vend the above-named patent improvement in sash lock, dated March 30th, 1869, No. 88318, in the whole United States, for the full term of said patent.

In consideration of which M. Greenwood & Co. agree to get up and keep a stock on hand of the above-named patent sash locks, and use due diligence to introduce and dispose of the same to the best of advantage, and agree to pay to the said George Voll a royalty of twenty (20) cents per dozen for each and every dozen they may sell of numbers one (1) and two (2) of said patent locks, and a royalty of fifty (50) cents per dozen for each and every dozen they may sell of numbers three (3), four (4), five (5), six (6) of said patent sash locks, said royalty to be due and payable quarterly; and should the said M. Greenwood & Co. violate any of the provisions of this contract, then this agreement to be void, otherwise to remain binding and in full effect in law.

In witness whereof we hereunto set our hands and seals this 30th day of July, 1869.

GEORGE VOLL. [L. S.]
M. GREENWOOD & CO. [L. S.]

Witness:
WM. E. COOKE.
WM. H. EDWARDS.

[U. S. rev. stamp, 5c. Cancelled.]
(Recorded Oct. 1, 1869.)

27 (Liber Y 12, page 250.)

[5 cts. 1, 9, '69.]

Whereas George McGregor and George Voll, both of Cincinnati, in the State of Ohio, did obtain letters patent of the United States for an improvement in sash locks, bearing date March 30th, 1869, and numbered 88318;

And whereas by an instrument in writing, properly executed, and bearing date the 30th day of July, 1869, the said George Voll assigned, sold, and set over unto us, M. Greenwood & Co., of said Cincinnati, Ohio, all his right, title, and interest in and to the said letters patent and invention:

Now this indenture witnesseth, that for and in consideration of the sum of two hundred and fifty dollars, lawful money of the United States, to us in hand paid, the receipt whereof is hereby acknowledged, we, the said M. Greenwood & Co., have, and by these presents do assign, sell, transfer, and set over unto the said George Voll all our right, title, and interest in and to the said letters patent and invention so transferred to us by the said assignment of July 30th, 1869; the same to be held and en-

joyed by the said George Voll and his legal representatives, to the full end of the term for which the said letters patent are granted, in as full and ample manner as the same could have been held and enjoyed by me if this assignment and sale had not been made.

In testimony whereof we have hereunto set our hands and seals this 2nd day of February, A. D. 1870.

M. GREENWOOD & CO. [L. S.]

In presence of—
S. McGrew.
J. Blackwood.

(Recorded July 19, 1870.)

28 (Liber Y 12, page 251.)

[5 cts. G. McG. G. V. 1, 7, '69.]

Whereas we, George McGregor and George Voll, both of Cincinnati, in the State of Ohio, are the sole and exclusive holders and owners of certain letters patent of the United States, granted to us on the 30th day of March, 1869, for improvement in sash locks, and numbered 88318;

And whereas William A. Hopkins and Frederick Z. Dickinson, both of New York City, are desirous of acquiring all our right, title, and interest in and to said letters patent and invention:

Now, therefore, be it known that for and in consideration of one dollar, lawful money of the United States, to us in hand paid, and certain other valuable considerations, the receipt whereof is hereby acknowledged, we, the said George McGregor and George Voll, have, and do by these presents, assign, sell, transfer, and set over unto the said William A. Hopkins and Frederick Z. Dickinson all our right, title, and interest in and to the said letters patent and invention thereby secured; the same to be held and enjoyed by the said Hopkins and Dickinson, and their legal representatives, to the full end of the term for which said letters patent are granted, in as full and ample manner as the same could have been held and enjoyed by us if this assignment and sale had not been made.

In testimony whereof we have hereunto set our hands and seals this 1st day of July, 1870.

GEORGE McGREGOR. [L. S.]
GEORGE VOLL. [L. S.]

In presence of—
W. R. Cox.
W. H. Beecker.

(Recorded July 19, 1870.)

29 (I 17, p. 454.)

Whereas letters patent of the United States of America were, on the 30th day of March, A. D. 1869, granted to William A. Hopkins and Frederick Z. Dickinson, assignees by mesne assignment of George McGregor and George Voll, said letters patent being entitled for a new and useful "improvement in sash locks";

And whereas said letters patent were duly reissued to said Hopkins and said Dickinson on the 21st day of January, A. D. 1873, being entitled for the same invention and numbered reissue 5253; and whereas the Hopkins & Dickinson Manufacturing Company of the city of New York, State and county of New York, are desirous of acquiring the en-

tire title to said reissued letters patent No. 5253, and the invention thereby secured, for all of the United States:

Now, therefor, in consideration of the premises, and of one dollar lawful money of the United States to us in hand paid, the receipt whereof is hereby acknowledged, we, the said William A. Hopkins and said Frederick Z. Dickinson, do by these presents assign, sell, and set over unto the said The Hopkins & Dickinson Manufacturing Company all our right, title, and interest in and to the said reissued letters patent No. 5253, and the invention thereby secured, and all renewals and extensions thereof, the same to be held by the said The Hopkins & Dickinson Manufacturing Company, its successors or assigns, for the full term of said original grant or any extensions that may hereafter be granted, as fully and completely as we could have held had this assignment and sale not been made.

30 In witness whereof we have hereunto set our hands and seals this 9th day of January, A. D. 1874.

HOPKINS & DICKINSON, [L. S.]
By F. Z. DICKINSON.

In presence of—
PHILLIPS ABBOTT.

(Recorded January 10, 1874.)

(J 19, 496.)

Whereas letters patent of the United States of America were, on the 30th day of March, A. D. 1869, granted to George McGregor and George Voll, both of Cincinnati, in the State of Ohio, entitled for a new and useful "improvement in sash locks";

And whereas said letters patent were thereafter duly reissued to William A. Hopkins and Frederick Z. Dickinson, assignees of said McGregor and Voll, on the 21st day of January, 1873, and numbered reissue 5253;

And whereas the Hopkins & Dickinson Manufacturing Company, of the city of New York, State and county of New York, are desirous of acquiring the entire title to said reissued letters patent, and the invention thereby secured, for all of the United States:

Now, therefore, in consideration of the premises, and in further consideration of one dollar lawful money of the United States to us in hand paid, the receipt whereof is hereby acknowledged, we, the said William A. Hopkins and said Frederick Z. Dickinson, do by these presents assign, sell, and set over unto the said The Hopkins & Dickinson Manufacturing Company all our right, title, and interest, severally, in
31 and to the said reissued letters patent numbered 5253, and the invention thereby secured, and all reissues and extensions thereof, the same to be held by the said The Hopkins & Dickinson Manufacturing Company, its successors or assigns, for the full term of said original grant, and any extensions that may hereafter be granted, as fully and completely as we could have held had this assignment and sale not been made.

This instrument is executed by the parties hereto for the purpose of ratifying and confirming an instrument executed by them on the 9th day of January, 1874, by F. Z. Dickinson.

Witness our hands this 17th day of August, A. D. 1875.

WM. A. HOPKINS.
F. Z. DICKINSON.

Witness:
E. G. THOMPSON.

(Recorded August 19, 1875.)

Defendants' Exhibit D.—E. E. M., Comm'r.

(65.)

DEPARTMENT OF THE INTERIOR, U. S. PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted McGregor and Voll, dated March 30th, 1869, No. 88318, for improvement in sash locks.

In testimony whereof, I, W. H. Doolittle, Acting Commis-
33 sioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-second day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and first.

[L. S.] W. H. DOOLITTLE,
Acting Commissioner.

No. 88318.

The United States of America, to all to whom these letters patent shall come:

Whereas George McGregor and George Voll, of Cincinnati, Ohio, have alleged that they have invented a new and useful improvement in sash lock, and have made oath that they are citizens of the United States; that they verily believe they are the original and first inventors or discoverers of the said improvement, and that the same hath not to their knowledge and belief been previously known or used; have paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor.

These are, therefore, to grant to the said McGregor and Voll, their executors, administrators, or assigns, for the term of seventeen years from the thirtieth day of March, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used, the said improvement, a descrip-
33 tion whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington, this thirtieth day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third.

[L. S.] J. D. COX,
Secretary of the Interior.

Countersigned and sealed with the seal of Patent Office.

ELISHA FOOTE,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

George McGregor and George Voll, of Cincinnati, Ohio. Letters Patent No. 88318, dated March 30, 1869. Improvement in sash-lock.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that we, George McGregor and George Voll, of Cincinnati, in the county of Hamilton, and State of Ohio, have invented a new and useful sash-lock; and we do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, in which—

Figure 1 is a plan view of our sash-lock, secured to the top and bottom rail of the upper and lower sash for windows;

Figure 2, a vertical section of the same, taken in *x x* of fig. 1; and

Figures 3, 4, and 5, are detail views.

The nature of our invention consists in the peculiar construction and arrangement of a sash-lock, by means of which both the upper and lower sashes of a window are securely held closed, and at the same time the two meeting rails are kept closely together, thus preventing any vibration of the same.

To enable those skilled in the art to make and use our invention, we will proceed to describe its construction and operation.

A represents the top rail of the lower sash, and

B, the lower rail of the upper sash.

C, the base-plate of the lock, which is screwed on to the top of the rail A.

D is a circular hollow case, which rests on the base-plate C.

a is a hollow shaft, which is a part of the base-plate C.

In the top of the case D is an opening, through which the upper end of the hollow shaft *a* passes.

The case D is held on the base-plate C by means of the bolt *b*, which passes through the hollow shaft *a*, and is riveted to the plate C, the case D being allowed to play freely around the said hollow shaft.

E is a hollow arm, which is an extension of the case D, in which is placed the bolt F.

Inside of this hollow arm E, and around the bolt F, is a spiral spring *d*, one end of which rests against the outer end of the arm E, and the other against a pin passing through the bolt F.

On the base plate C is a segment *c*, against which the end of the bolt F rests.

Inside of the case D and around the hollow shaft *a* is a coil spring, *e*, the ends *f g* of which are turned outward, the end *f* resting against the leg *h* on the inside of the case D, and its other end resting against the segment *c* on the base-plate C, as seen Fig. 3.

On the side of the case D, opposite the arm E, is another arm G, on the out end of which is a projection, *i*, which extends upwards.

To the rail B is secured a striking plate or catch, H, of the form shown in Fig. 5.

By making it in this form it is secured both to the top and side of the meeting-rail of the upper sash, the screws entering at right angles to each other, thus securing it firmly.

Its operation is as follows:

When the sash is unlocked the arms E and G are parallel to the edges of the meeting rail of the lower sash.

To lock the sash, take hold of the outer end of the bolt F, and by turning it towards you the arm G is thrown around over the top of the meeting-rail of the upper sash, passing under the catch H and the projection *i* on the said arm, passing outside and against the said cam-shaped catch as seen in Fig. 1, thus drawing the two sashes closely together.

As soon as the inner end of the bolt F has passed the end of the segment *c*, it is forced inward by the spring *d*, thus securely locking the sash. To unlock it, draw out the bolt F until its inner end reaches
36 the outside of the segment *c*, when the spring *e* throws the bolt and arm E and G back into their former position.

Having thus fully described our invention, what we claim as new and desire to secure by letters patent is—

In a sash bolt the arrangement and combination of the base-plate C with the segment *c* thereon, case D, spring-bolt F, arm G, and catch H, as shown and described for the purpose specified.

GEORGE McGREGOR.
GEORGE VOLL.

Witnesses:
BEN. McGREGOR.
HOWARD DOUGLASS.

(65.)

DEPARTMENT OF THE INTERIOR, U. S. PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office.

In testimony whereof I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and first.

[SEAL.]

W. H. DOOLITTLE,
Acting Commissioner.

37 In the matter of the application for reissue of letters patent granted to McGregor and Voll. Filed August 20th, 1875. "Improvement in sash-locks."

Amendments.

HON. COM'R OF PATENTS:

SIR: We hereby amend the specification in the above-entitled matter as follows:

In the second line from the bottom of page 2, erase the words "socket or depression," and substitute therefor the words "catch segment."

Erase the words "socket or depression," at the top of page 5, and substitute the words "catch segment."

Erase the words "into the depression," 8th line, page 5, and substitute "by the segment."

Erase the word "socket," line 21, page 5, and substitute "catch segment."

Erase the words "depression or socket," line 7, page 6, and substitute "place behind the catch segment."

Erase the words "socket into," line 17, page 6, and substitute "catch segment behind."

Erase the word "enter," line 18, page 6, and substitute the word "pass."

HOPKINS & DICKINSON M'F'G CO.,
By Asso. Att'y WM. C. McINTIRE.

38 *Complainant's Exhibit, Brockseiper & Sargent patent.*

The United States Patent Office, to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent and certificate of extension granted Joseph B. Sargent, dated May 11th, 1858, No. 20238, for "improved sash-fastener."

In testimony whereof, I, J. M. Thatcher, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this thirteenth day of June, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

J. M. THACHER,
Acting Commissioner.

United States of America, to all to whom these letters patent shall come:

Whereas Frederick W. Brockseiper and Joseph B. Sargent, of New Britain, Connecticut, have alleged that they have invented a new and useful improved sash-fastener (they having assigned their right, title and interest in said fastener to Joseph B. Sargent, of said New Britain), which they state has not been known or used before their application, have made oath that they are citizens of the United States, that they do verily believe that they are the original and first inventors or dis-
39 coverers of the said fastener, and that the same hath not, to the best of their knowledge and belief, been previously known or used; have paid into the Treasury of the United States the sum of thirty dollars, and presented a petition to the Commissioner of Patents, signifying a desire of obtaining an exclusive property in the said fastener, and praying that a patent may be granted for that purpose:

These are therefore to grant, according to law, to the said Joseph B. Sargent, his heirs, administrators, or assigns, for the term of fourteen years from the eleventh day of May, one thousand eight hundred and fifty-eight, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said fastener, a description whereof is given in the words of the said Frederick W. Brockseiper and Joseph B. Sargent, in the schedule hereunto annexed, and is made part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent-Office has been hereunto affixed.

Given under my hand at the city of Washington, this eleventh day of May, in the year of our Lord one thousand eight hundred and fifty-eight, and of the Independence of the United States the eighty-second.

[L. S.] JACOB THOMPSON,
Secretary of the Interior.

Countersigned and sealed with the seal of the Patent-Office.

J. HOLT,
Commissioner of Patents.

The schedule referred to in these letters patent, and making part of the same.

To all whom it may concern:

Be it known that we, Frederick W. Brockseiper and Joseph B. Sargent, both of New Britain, County of Hartford, State of Connecticut, have invented new and useful improvements in sash-fasteners, and we hereby declare that the following is a full and exact description of the construction and operation thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making a part of this specification, in which Figure 1 is a perspective view.

Figure 2 is the same inverted, with the bottom plate taken off in order to show its interior construction and operation.

Figure 3 is a part of the fastener, showing the application of a spiral spring, E, which may be used instead of the flat spring F, in Figures 1 and 2.

In Figure 1, A is the main case, which is fastened by screws to the bottom of the upper window-sash, in the usual manner; C is the striking-plate or catch, which is fastened in the usual manner to the top of the lower sash, and exactly in front of A; B is the bar which turns on the pivot P, and is made with a hook at the outer end to hook over the turned-up edge of the striking-plate or catch C, in the usual manner; D is a bolt which by its own weight, or by the force of the spring E, is forced down and catches into the hole F; G is the front of the case; H, in Figure 2, is a projection on the inside of the back of the case; G, in Figure 2, is the front of the case; I is a bent spring that operates and holds the bar.

41 By an examination of the drawings (or of the model which is sent herewith), it will be readily seen that the case A, and the striking-plate or catch C, being fastened to the window in the usual manner, as described above, and the bar B being turned at right angles with the case A, the bolt D is brought over the hole F, and by means of its own weight or by the spring E is forced into the hole F, holding the bar B firmly, and preventing it from being forced around to a position parallel with the case C, by means of a case-knife or other similar instrument, inserted up between the sashes by persons outside, as can readily be done to all similar sash-fasteners heretofore invented, they not having the bolt D and hole F.

The advantage of the bolt attachment D is obvious, rendering the fastener proof against burglars, unless the glass is broken, as no instrument can be introduced from the outside between the sashes that will at the same time lift the bolt D and force the bar B around to allow the sash to open.

We claim as our invention, and desire to obtain letters patent therefor—the bolt D, as an attachment to a sash-fastener, operating in the manner substantially as described.

F. W. BROCKSEIPER.
J. B. SARGENT.

Witnesses:
T. S. NORTHROP.
M. H. STANLEY.

42 Whereas, upon the petition of Frederick W. Brockseiper and Joseph B. Sargent, of New Haven, Connecticut, for the extension of the patent granted to them May 11, 1858, for an "improved sash-fast'ner," the undersigned, in accordance with the act of Congress approved the 8th day of July, 1870, entitled "An act to revise, consolidate and amend the statutes relating to patents and copyrights," did on this twenty-fourth day of April, 1872, decide that said patent ought to be extended:

Now, therefore, I, Mortimer D. Leggett, Commissioner of Patents, by virtue of the power vested in me by said act of Congress, do renew and extend the said patent and certify that the same is hereby extended for the term of seven years from and after the expiration of the first time, viz: from the 11th day of May, 1872, which certificate being duly entered on record in the Patent Office, the said patent has now the same effect in law as though the same had been originally granted for the term of twenty-one years.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed, this twenty-fourth day of April, 1872, and of the Independence of the United States the ninety-sixth.

[L. S.] M. D. LEGGETT,
Commissioner.

43 *Compl't's Exhibit, English patent—Weild's specification.*

A. D. 1843. No. 9614. Windows, blinds, curtains, &c.

My invention consists, firstly, of certain improved fastenings for windows, commonly called sash-fastenings.

Figure 8 represents a vertical section, Figure 9 a plan, and Figure 10 an end view (partly in section), of another of my improved sash-fastenings. This fastening resembles in the general nature of its actions the sash fastening in common use; it consists of two plates, *a* and *a'*, to be fixed to sashes of the window; on the plate *a'* is the segmental protection *b*; *c* is a lever joined to the plate *a* at *d*; the lever *c*, on being brought into the position indicated by the red lines in Figure 9, describes a curve eccentric to that of the segment *b*, and the end of the lever *c*, bearing against the segment, wedges the plates *a* and *a'* together. In the fastening thus constructed, a person external to the room may unfasten the sashes by introducing a thin plate of metal (a table-knife for example) between the edges of the sashes, and forcing back the lever from that position shown by the red lines, Figure 9, to that fully drawn. The object of my improvement is to prevent such unfastening, and I effect this in the following manner: The interior edge of the segment *b* is formed into a rack, and a bolt, *e*, sliding in the lever *c*, is pressed against the rack of the segment *b* by the helical spring *f*. It is evident that when the lever *c* is brought into the position shown by the red lines, Figure 9, it cannot be moved back
44 until the bolt *e* is pushed back from the rack; this is effected by pushing up the knob *e'* connected with the bolt.

Thirdly, the addition of a spring-bolt and rack to the ordinary sash-fastening, whereby the unfastening the same by a person outside the apartment is prevented, as hereinbefore described and represented in Figures 8, 9, and 10.

In witness whereof, I, the said William Weild, have hereunto set my hand and seal, this eighteenth day of July, in the year of our Lord one thousand eight hundred and forty-three.

WILLIAM WEILD. [L. S.]

Fig. 8.

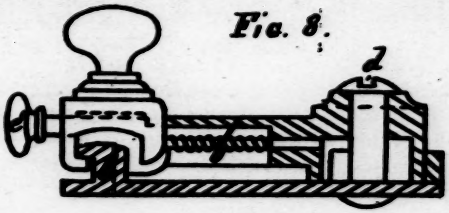


Fig. 9.

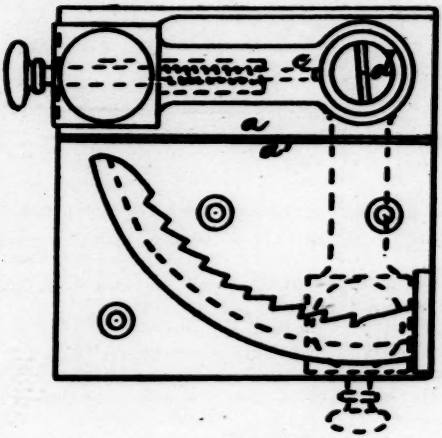


Fig. 10.



46 *Exhibit A.—E. E. Marvin, U. S. commissioner.*

(65.)

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the files of this office, of the file wrapper, contents and drawing in the matter of the application of George Voll, filed February 25th, 1868, and rejected—for sash-locks.

In testimony whereof I, Ellis Spear, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this twenty-third day of November, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

[L. S.]

ELLIS SPEAR,
Acting Commissioner.

47 CINCINNATI, *February* 19, 1868.

COMMISSIONER OF PATENTS:

DEAR SIR: I herewith remit you certificate for fifteen dollars on application of George Voll for improved sash-lock. Specifications, drawings and model sent by express.

Yours respectfully,

F. U. STOKES, *Attorney.*

COUNTY OF HAMILTON,
State of Ohio:

JANUARY 30TH, 1868.

TO THE COMMISSIONER OF PATENTS:

SIR: F. U. Stokes, esq., of Cincinnati, Ohio, is hereby appointed and declared to be my sole lawful attorney, for me and in my name to prosecute my application for a patent for a sash-lock now pending in the Patent Office; to alter or amend the specification of said application; to receive the patent if granted, and otherwise to do all that I could do if personally acting in the premises.

GEORGE VOLL.

[50. January 30th. 50.]

48 COUNTY OF HAMILTON,
State of Ohio, ss.:

On this 30th day of January, 1868, before the subscriber, a notary public, personally appeared the within named George Voll, and made solemn oath that he verily believes himself to be the original and first inventor of the within described sash-fastener, and that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

GEORGE VOLL.

[5. January 30. 5.]

Sworn to and subscribed before me this 30th day *day* of January, 1868.

[L. S.]

A. T. WILLIS,
Notary Public of Hamilton County, Ohio.

To the Commissioner of Patents:

Your petitioner prays that a patent may be granted to him for the invention set forth in the annexed specification.

GEORGE VOLL.

To all whom it may concern:

Be it known that I, George Voll, of Cincinnati, in the County of Hamilton, in the State of Ohio, have invented a new and useful improvement in sash-locks, the object of which is prevent it being unfastened from the outside by inserting a knife or thin instrument between the sash; and I do hereby declare that the following is a clear, full and exact description of the construction and operation of the same, reference being had to the annexed drawings, making a part of this specification, in which fig. 1 is a perspective view of the lock as attached to the sash, with its cap and pin C off to show the working of the coiled spring *k*. Fig. 2, a cross section showing the pin or bolt F and the spring G.

The construction is as follows: On the plate which is fastened on the top of the inside sash, as shown at K K, figs. 1 and 2, there is large stump, A, which is turned; on the stump A the lock or fastener is fitted; in the front of the stump A is a hole which receives the pin F, as forced in by the spring G; when locked, the spring *k* is intended to throw the fastener around parallel with the sash when relieved, by pulling the pin F towards you. B, in fig. 1, is the cap and pin which enters the hole *a*, and secures the whole to the plate K; on the outside sash is fastened a plate K, in which is attached the piece D, which serves as the catch to the lock, the back of which being a greater circle than formed by the motion of the fastener, serves to hold the sashes firmly together and prevent rattling, by the pressure of the point or lip *c* on the piece D. Its operation is as follows: the spring *k* throws the fastener in a parallel position with the sash. When desired to be locked, the fastener is simply turned as in an ordinary fastener, or until the pin F will enter the hole in the stump A, which locks it and keeps it from turning; to unlock it, the knob at end of pin F is pulled towards you, when, by the action of the spring *k*, the fastener is relieved from the catch D and remains parallel with the sash.

Having thus fully described and set forth the nature of my invention, what I desire to secure by letters is:

The pin F, operating in hole in stump A, preventing the fastener from being turned, as described and set forth.

GEORGE VOLL.

Witnesses:
F. U. STOKES.
O. HANKS.

(19.)

UNITED STATES PATENT OFFICE,
Washington, D. C., *May* 18, 1868.

GEORGE VOLL.
Care of F. U. Stokes, Cincinnati, Ohio.

SIR: Please find below the decision of the examiner in charge in the matter of your application for patent for improved sash fastener, filed February 24, 1868.

Very respectfully,

Commissioner.

Examiner's Room, No.

The application above referred to has been examined, and
51 seems to be substantially anticipated by the patent of Brockseiper & Sargent, May 11, 1858, No. 20238.

Reference is also made to the patent of Robert Lee, May 30, 1865, No. 49962.

The application of Mr. Voll must therefore be refused.

T. N. BOVEE,
Assistant Ex'r.
By WILLIAM BURKE,
Assistant.

CINCINNATI, *July* 16, 1868.

To the Commissioner of Patents:

DEAR SIR: Geo. Voll, of Cincinnati, filed an application for an improved sash-fastener, February 24, 1868, which has been examined and rejected, as per your decision and communication of May 18, 1868, which states "that the application above referred to has been examined, and seems to be substantially anticipated by the patent of Brockseiper & Sargent, May 11, 1858, No. 20238. Reference is also made to the patent of Robert Lee, May 30, 1865, No. 49962."

Believing there has been an error of judgment in the decision of the assistant examiner, I would respectfully ask a re-examination of the application, and that you carefully compare George Voll's improvement with those already granted on the following points:

Brockseiper & Sargent is secured to the outside or top sash;
52 George Voll secures his to the inside or bottom sash. Brockseiper & Sargent is locked by a flange on the arm which catches under the edge of the striking plate. Voll's has no such flange or such striking plate. Brockseiper & Sargent is secured and prevented from being turned from outside by having a pin at the end of the latch, which works perpendicular and drops into a hole in the striking-plate. Geo. Voll's has a pin or bolt in the latch which works horizontal therewith, which prevents the latch being turned by catching in an opening in the centre-pin on which the latch revolves; these pins are the only apparent similarity of the two fasteners, and I respectfully ask a careful comparison.

In regard to the patent of Robert Lee, allow me to draw your attention to the difference of the two fasteners. The latch of Lee's fastener is slotted to allow a motion on its centre-pin, that it may catch behind the lip on the striking-plate, which prevents its being turned. Voll's has no slot in the latch, but a plain round hole; it has no lip on the striking plate, but is prevented from being turned by the pin or bolt catching into the opening in the centre-pin or stump on which the latch turns.

The only apparent similarity of Lee's and Voll's fastener is that they both have spiral springs in the latch; but Lee's is to move the latch which makes the fastener, while Voll's only moves the pin or bolts which works in the centre-pin to secure the fastener.

Having thus briefly as possible compared and endeavored to show the difference in the fasteners mentioned, allow me again to ask a careful re-examination of the improvement and claim of Geo. Voll; and that you may more fully compare it with others, I send you another model that can readily be taken apart.

Respectfully yours,

F. U. STOKES, *Attorney.*

53 (6.)

UNITED STATES PATENT OFFICE,
Washington, D. C., August 6, 1868.

GEORGE VOLL,
Care of F. U. Stokes, Cincinnati, Ohio:

SIR: Please find below the decision of the examiner in charge, in the matter of your application for patent for improvement in sash-fasteners, filed February 24, 1868.

Very respectfully,

Commissioner.

EXAMINER'S ROOM, No. 18.

The application above referred to has been re-examined, and the argument filed the 24th inst. duly considered. The claim is still regarded as being substantially answered by the references formerly given, and must therefore be a second time refused.

T. N. BOVEE,
1st Ass't Ex'r, in charge.

54 No. 146. 1868.

GEORGE VOLL,
Of Cincinnati,
County of Hamilton,
State of Ohio.

SASH-LOCKS.

Rec'd, Feb'y 24, 1868.
Petition, " " "
Affidavit, " " "
Specification, " " "
2 drawings, " " "
Model, " " "
1 cert. dep., $15, Feb'y 24, 1868.
Cash.
Add'l fee cert.
" " cash.
Examined.
2 issues
3 patented 186 .
Recorded, vol. page .
Circular.

F. U. STOKES,
Cincinnati,
Ohio.

1868.
Rejected May 18, 1868.
Rejected Aug. 6, 1868.

55 Proofs for final hearing on the part of complainants, taken before Edward G. Thompson, one of the standing examiners of the court for the southern district of New York, under and pursuant to the 67th rule in equity, as amended.

NEW YORK, *March* 21, 1876—12 m.

Present, Charles F. Blake, esq., of counsel with compl't; Charles E. Mitchell and O. H. Platt, of counsel with def'ts.

Counsel for complainant here offers in evidence a certified copy of reissue letters patent No. 6693, dated October 11, 1873, granted Hopkins & Dickinson Manufacturing Co., which is marked Complainant's Exhibit No. 1, E. G. T., Examiner.

Also certified copy of assignments: George Voll to M. Greenwood & Company, 30th July, 1869; M. Greenwood & Co. to George
56 Voll, 2d February, 1870; George McGregor and George Voll to Frederick Z. Dickinson and William A. Hopkins, 1st July, 1870; Hopkins & Dickinson, by F. Z. Dickinson, to Hopkins & Dickinson Manufacturing Company, 9th January, 1874; and William A. Hopkins and F. Z. Dickinson to Hopkins & Dickinson Manufacturing Company, 17th August, 1875, which is marked Complainant's Exhibit No. 2, E. G. T., Examiner.

Counsel for defendants hereby admits that sash-locks similar to those now offered in evidence for complainant, and marked Complainant's Exhibit No. 3, E. G. T., Examiner, were made and sold by Parker & Whipple Company and H. J. P. Whipple after the date of the reissue patent upon which this suit is brought, and prior to the filing of the bill of complaint.

And the witness HENRY B. RENWICK, a witness produced on the part of the complainant, being duly sworn, in answer to interrogatories propounded by Mr. BLAKE, says:

1. Q. What is your name, age, residence, and profession?

A. Henry B. Renwick; age, 58 years; residence, New York City; occupied at present, chiefly, in the examination of machinery and patents, and I am frequently examined as expert in causes in which patents are in question.

2. Q. Have you read and do you understand the contents of Complainant's Exhibit No. 1? If so, please state what invention, in your opinion, is therein described and referred to in the claim thereof.

A. I have frequently read the reissue patent referred to in the
57 question, and believe that I understand the invention therein described, and referred to in the claim thereof.

The thing described in the patent is a sash-lock, or a sash-fastener, which is composed, as a whole, of a base-plate upon which is mounted a lever, which can be turned into different positions, and a striking-plate, or hook-plate, which receives the lever when turned into the proper position.

In practice, the base-plate is fastened to the upper side of the top-rail of the lower sash, and the striking or hook-plate to the upper side of the lower rail of the upper sash, the two being so relatively arranged that when both sashes are struck the lever can be engaged with the striking or hook plate, so as to prevent either sash from being opened. So far the contrivance is a very old one, and the parts composing it have been manufactured in a great variety of forms.

Upon the vibrating lever of the sash-fastener, described in the reissue, is mounted, so that the two can be turned together, a bolt which slips into a slot or depression formed upon the base-plate, where the vibrating lever is engaged with the striking plate, the bolt thus holding the lever in the locked position, or in engagement with the striking-plate, and preventing the lever from being turned, so that the sashes may be opened, until the bolt is retracted. A bolt mounted upon the

vibrating lever was not new at the date of the patent on which this reissue is founded, and two patents are referred to in the reissue as having such bolts mounted upon the vibrating lever, or lock lever.

In one of these old sash-fasteners the bolt moved on the lever in a direction perpendicular to that in which the lock or vibrating lever moved; and in the other the bolt moved upon the lock-lever in
58 a direction parallel to the axis of the lock-lever, in the same direction as the bolt shown in the drawings of the reissue moves.

In both of these old contrivances there was a socket or depression on the striker-plate, into which the bolt shot when the vibrating-lever was properly engaged with the striker-plate; the vibrating-lever, therefore, could not be moved by a glazier's knife or similar article inserted from the outside, between the meeting rails of the sashes.

As I have before stated, in both of these sash-fasteners the socket depression or nick into which the bolt shot to hold the lever in place was formed on the striking-plate—whereas, on the contrary, this socket or depression is in the sash-lock, described in the reissue, formed upon the base-plate on which the locking lever is pivoted. The reissue gives reasons showing why this new location of the socket, and the so arranging of the bolt that it will act in connection with the socket upon the base-plate, is useful and important, and, as I understand it, the claim is to the combination of a vibrating-lever, with a bolt mounted upon it with a striking-plate, and with a socket or catch-segment (as the claim terms it) formed upon the plate upon which the lever is pivoted, which is the base-plate. There being, as I understand it, five elements claimed in combination, namely: first, the base plate, upon which the vibrating-level is mounted, and which has a socket upon it; second, the vibrating-lever mounted upon this plate; third, a bolt mounted upon the vibrating-lever; fourth, a striking-plate or hook; and, fifth, a socket or catch-segment, formed upon the base-plate—these parts being so combined that when the vibrating-lever is properly engaged with the striking-plate or hook, then the bolt can enter the socket formed
59 upon the base-plate in such manner that the vibrating-lever cannot be moved out of engagement with the striking-plate until the bolt is retracted.

3. Q. Please examine Complainant's Exhibit No. 3, and compare it with the invention described in the reissue letters patent, Complainant's Exhibit No. 1, and state whether, in your opinion, it embodies the said inventions, and give your reasons for any opinion you may express.

A. I have examined Complainant's Exhibit No. 3, which is, in fact, two sash fasteners, one arranged ready for use and the other in the detached pieces. This sash-fastener has, first, a base-plate carrying a vibrating-lever, and a socket *f*, the lever being mounted on the base-plate; second, a vibrating-lever which is mounted upon this base-plate; third, a bolt mounted upon and moving with the vibrating-lever; fourth, a striking-plate or hook; and fifth, a socket formed upon the base-plate. All these parts being so combined to act in the manner that the same parts described in the reissue patent operate; and, in my opinion, the invention referred to in the claim of the reissue letters patent, Complainant's Exhibit No. 1, is contained and embodied in the sash-fastener, Complainant's Exhibit No. 3.

I make this statement knowing that there are formal differences between the sash-fastener of the reissue and Complainant's Exhibit No. 3. In the reissue the bolt vibrates with the vibrating-arm, and slides to lock and unlock in lines parallel with that arm, or nearly so; whereas in this Exhibit No. 3 the bolt, although it moves with the vibrating-arm

when it is turned, still moves to lock and unlock in lines perpendicular to the line of the vibrating-arm; this line of motion of the bolt being the same as that of the bolt referred to in the reissue as being described in a patent granted by the United States, May 11, 1858; further, the socket or depression for the reception of the bolt is so constructed in Complainant's Exhibit No. 3 as to receive a bolt which moves vertically, or up and down, while the socket or depression of the sash-lock of the reissue is so formed as to receive a horizontally-moving bolt; but as both bolts operate in the same manner, produce the same effect in connection with sockets or depressions formed upon a base-plate, I consider these differences as formal merely, and not substantial.

4. Q. Do you find in the Complainant's Exhibit No. 3 the advantages described and set forth in the reissue? Point out how these advantages are secured in the reissue, and how they are secured in Complainant's Exhibit No. 3.

A. I do; in both cases they are secured, having reference to prior inventions, by forming the socket on the base-plate, and so constructing the bolt that it can engage with this socket on the base plate, when the vibrating-lever is properly engaged with the hook.

Counsel for complainant offers in evidence a sash-lock, which is marked Complainant's Exhibit No. 4, E. G. T., Examiner.

5. Q. Please examine Complainant's Exhibit No. 4, and state whether or not it embraces the invention described and claimed in reissue letters patent, Complainant's Exhibits No. 1.

A. It does; it is made in accordance with the drawings and description of the reissue.

And being cross-examined by Mr. PLATT, says:

61 6. X Q. To what device in complainant's patent do you refer as "the socket or depression of the sash lock of the reissue," in your answer to question 3?

A. I refer to that depression into which the bolt shoots, which depression is formed by the projection *c*, terminating at a point which is opposite the end of the bolt, when the bolt is carried by the vibrating lever into the position in which the bolt should shoot into the socket or depression.

7. X Q. Then the socket you refer to is wholly above the flat upper surface of this base-plate, is it not?

A. It is.

8. X Q. And would what you call a socket be any the less a socket if it were enclosed on all sides?

A. It would not. Only one side of the socket acts in connection with the bolt, to prevent the vibrating lever from being turned on its axis, and if this side exists, that is all that is necessary.

Counsel for complainant now offers in evidence, by consent, sash-lock, which is marked Complainant's Exhibit No. 5, E. G. T., Examiner.

And counsel for defendants, Paul F. Corbin, Frederick H. North, and Charles Peck, hereby admits that sash-locks similar to this were made and sold by them after the date of the reissue patent upon which this suit is brought, and before the filing of the bill of complaint.

It is hereby stipulated between counsel for the respective parties herein, that the testimony taken in this cause shall stand with full force and effect, and may be used in the cause of the Hopkins and Dickinson Manufacturing Company against P. & F. Corbin et al.; and that

62 the witness, Henry B. Renwick, would have made the same answers to questions regarding the Complainant's Exhibit No. 5 as

he did make regarding the Complainants' Exhibit No. 3, had they been put. And it is agreed and understood that the same questions have been put and the same answers given regarding Complainant's Exhibit No. 5 as concerning Complainant's Exhibit No. 3.

HENRY B. RENWICK.

Sworn to and subscribed before me, this 21st day of March, 1876.

E. G. THOMPSON, *Examiner.*

Proofs for final hearing on the part of the defendants, taken before Edwin E. Marvin, U. S. commissioner, by consent.

NEW BRITAIN, *May* 10th, 1876.

Present, Charles F. Blake, of counsel for complainant. O. H. Platt & C. E. Mitchell, counsel for defendants.

GEORGE VOLL, a witness produced by the defendants, having been duly cautioned and sworn, testified as follows, viz:

1. Q. What is your name, age, residence and occupation?

A. My name is George Voll; age, forty-two years; residence, Cincinnati, Ohio; my occupation is locksmith.

63 Counsel for defendants place in evidence certified copy of file wrapper, contents, and drawing in the matter of the application of George Voll filed February 25, 1868, and rejected, for sash-locks, marked Exhibit A, E. E. M., Com'r.

(Excepted to as incompetent.)

2. Q. Please look at Exhibit A, just placed in evidence, and state whether or not you are the same George Voll mentioned therein as the applicant for a patent.

A. Yes, sir; I am.

The defendant places in evidence a mounted sash-lock which is marked Exhibit B, E. E. M., Com'r.

3. Q. Please look at Exhibit B and state, if you know, what it represents.

A. This is just like the one that I tried to get a patent on, described in this drawing (pointing to Exhibit A).

4. Q. When, if at all, did you first make a sash-lock like Exhibit B, which as you say is just like the drawing appended to your rejected application, Exhibit A?

A. I could not recollect exactly the time. It was in February, 1868, I think. It was in 1868; I could not state precisely the day or the month.

5. Q. Was it before or after the date when you applied for the letters patent which were rejected? I mean Exhibit A.

A. I made some about a month after the application was sent to Washington.

6. Q. When was the model made, with reference to the date of the application, before or after?

64 A. As well as I can recollect, I took the model to the patent agent and he sent it and the application off together.

7. Q. State whether there was any difference between the model which you took to the patent agent and Exhibit B.

A. No; there was a little better finish on it than there is on this. All the rest was just the same and it was marked "patent applied for."

8. Q. Who made the original model that you took to the patent agent?

A. I made it myself.

9. Q. State whether or not the sash-lock made by you as a model was a complete working sash-lock?

(Objected to as not being the best evidence and motion made to strike out.)

A. It was.

10. Q. What has become of that sash-lock, so far as you know?

A. That was sent on to Washington by the agent, that is, the model that we are talking about, and I have never seen it since; I do not know what has become of it.

11. Q. In what way, if any, was it tried to see if it would work?

A. It was tried on a block.

12. Q. Describe fully how.

A. It was tried on two blocks the same as Exhibit B. It shows that it pulls the two sashes together and prevents a knife from getting in there and holds the window-sashes tightly together.

13. Q. State whether, in making the said sash-lock, you received any instructions or suggestions as to how it should be made from any other person?

A. No, sir; I did not.

65 14. Q. In answer to question fifth, you say you made some about a month after the application was sent to Washington. State how many you made, where you made them, and what you did with them after you had made them.

A. I could not recollect; I could not state exactly, but it was about a dozen or a dozen and a half. I made them in George McGregor's lock shop in Cincinnati, Ohio. After I had made them I sent them from the factory down to the store; that was all I done with them. I sent them down to the store, and I expect that they sold them.

15. Q. Were they changed in any manner by you after they were first put up; and if so, how?

A. They were changed. There was a round wire spring in the top; they did not work well with that round wire, and they were sent back again from the store to the factory; and then I made a flat spring out of brass wire, and put that in the place of the round spring wire.

16. Q. What kind of wire were the first springs made of?

A. The first springs in them locks were made of round brass wire.

17. Q. What kind of wire did you make the springs of when you changed them?

A. Of flat brass wire.

18. Q. How did the sash-locks work after the springs were changed?

A. Worked better than they did before.

19. Q. State, if you remember, how those sash-locks were finished.

A. They were silver-plated. I am not sure that all of them were silver-plated, but some of them were silver-plated, anyhow.

20. Q. Look at the article shown to you, and state what it is.

66 A. It is the second sash-lock that I made after the first one was rejected by the Patent Office.

Defendants place in evidence article referred to in last question, marked Exhibit C, E. E. M., Com'r.

21. Q. State whether all the parts of Exhibit C are the identical parts made by you, as parts of the sash-lock last referred to; and if not, which are the identical parts made by you and which not?

(Question withdrawn.)

22. Q. State, if you know, who made Exhibit C.

A. I made that myself.

23. Q. The Exhibit C seems to consist of two parts—a base-plate for

the lever and a striking-plate. Did you make both parts; and, if so, when?

A. I did make both parts, and I made both of them after my first application was rejected in the Patent Office.

24. Q. How long after?

A. I could not tell exactly how long after. Right after the first one was rejected I began to think of something different from the one that was rejected, and I got up this one.

25. Q. Can't you tell about how long it was?

A. It was about two or three weeks after.

26. Q. Do you mean that the strike-plate is the same one you made, or that it is just like the one that you made?

A. It is not the same piece of metal; it is made like it.

27. Q. Is the base-plate of Exhibit C, with what is on it, the same piece of metal you made soon after your application was rejected?

A. No, it is not; it is one part of it.

67 28. Q. What portion or portions of the base-plate of Exhibit C is the same metal you made then, soon after your application was rejected? State fully.

A. This is the same thing, and the only one that I made. It is the same except the striker. There was a different striker made, which was lost, and this was made as a substitute for it.

29. Q. What did you do with the sash-lock that you made—Exhibit C?

A. I showed it to Mr. McGregor, and sent it to Munn & Co., New York.

30. Q. State whether the sash-lock you made at that time, after your first application for a patent was rejected, was a practical working sash-lock?

A. It was.

31. Q. For what purpose did you send it to Munn & Co., and with what result?

A. I sent it to Munn & Co. to get a patent on it and he sent back word that I could not get a patent on it.

32. Q. In your answer to question 14, you state that you sent certain locks to the store after you had made them; whose store do you mean?

A. George McGregor's store.

Defendants place in evidence certified copies of letters patent issued to George McGregor and George Voll, dated March 30, 1869, No. 88318, for improvement in sash locks, marked Exhibit D, E. E. M., Com'r.

33. Q. Are you the same George Voll mentioned in letters patent a copy of which has just been placed in evidence, marked Exhibit D?

A. I am.

34. Q. Of the three sash-locks under consideration, to wit, the one described in the rejected application, the one sent to Munn & Co.,

68 and the one described in letters patent of March 30, 1869, to yourself and McGregor, which was first invented?

A. The one that the application for which was rejected.

35. Q. Which was the one next invented?

A. The one I sent on to Munn & Co.

36. When was the third one invented, with reference to the time when you were informed that Munn & Co. said you could not obtain a patent for the second one?

A. It was several weeks afterward.

Hearing adjourned to May 11, 9 a. m.

MAY 11, 1876.

Hearing opened 9 a. m.

Same counsel as yesterday in attendance.

37. Q. What became of your plan to get a patent upon the first lock which you made, the application for which was rejected?

A. I done away with that first one after it was rejected.

38. Q. Have you ever since made any effort to obtain a patent therefor?

A. I have not.

Cross-examined:

39. X Q. What was your business in 1868?

A. I was a locksmith, and worked for McGregor.

40. X Q. How long had you worked for McGregor?

A. I had worked for him from 1856 till the war begun; I was
69 then three years in the war, and after that worked for him until six years ago; I was ten years with him altogether, I expect.

41. X Q. You say that after you sent your application for your first sash-lock to the Patent Office, you made a number of sash-locks like that one, and afterwards altered them by changing the spring. How long after you made them was it that you changed these springs?

A. I expect it was about a day; I sent them down to the store; they did not suit the old man, and he sent them back to the shop, and they were sent up to the same room where they were made.

42. X Q. What was your position in McGregor's shop?

A. I had charge of the shop.

43. X Q. Did he pay you for all your time?

A. He paid me for all the time I worked for him.

44. X Q. In what month was it that you made your second sash-lock?

A. I could not recollect that.

45. X Q. Was it in April?

A. I do not know.

46. X Q. May it not have been as late as July?

A. I could not recollect the month.

47. X Q. Was it in the summer or autumn that you invented your second sash-lock?

A. I could not remember whether it was in the summer, fall, or spring. I think Mr. McGregor has it all marked down; I could not tell exactly.

48. X. Q. When was the third sash-lock invented?

A. That was—I could not recollect that.

49. X Q. What do you understand to be the difference in principle or mode of operation between the first, second, and third sash-locks?

A. The second one, after the first was rejected, I invented to
70 get rid of the trouble of the first one, and I made, in place of a bolt shooting in a hole, a lift-latch which raises over a reach or a fence; the last one I put a smaller shaft, or we, McGregor and I, he assisted me in that one, and a reach one-quarter around the shaft. I also made a curled spring around the shaft, and we made the vertical flange on the striking-plate.

50. X Q. How much did Hopkins & Dickinson pay you and McGregor for the patent?

A. They paid me five hundred dollars, and I expect they paid McGregor five hundred dollars.

51. X Q. Were you asked to sign the application for the last reissue?

A. Yes, sir.

52. X Q. Did you do so?

A. No, sir.

53. X Q. Why didn't you?

A. Mr. McGregor refused to sign it, so I done the same.

54. X Q. Didn't you and McGregor offer to sign it if they would pay you a thousand dollars?

A. The way that was, Mr. Douglass he explained to us about these papers; I do not know what to call them; I had told him before that *that* Mr. Hopkins had offered to pay me one thousand dollars for my part—half the patent; on that account he only paid me five hundred; I expected to get the other five hundred by not signing the papers.

55. X Q. Did you not offer to sign the papers if they would pay you and McGregor a thousand dollars?

A. I believe I did.

56. X Q. And they would not pay it, would they?

A. I don't know; I did not get the letter.

57. X Q. Did you ever get a thousand dollars or any part of it for signing the papers for reissue?

71 A. No.

58. X Q. Counsel for complainant shows witness a paper and asks if the signature at the foot is his.

A. It is.

Paper put in evidence and marked Complainant's Exhibit 6, E. E. M., commissioner.

59. X Q. Who asked you to come here?

A. Mr. Douglass, a lawyer in Cincinnati, Ohio.

60. X Q. What did he say to you about coming here?

A. He said there was a trial about that sash-lock.

61. X Q. What else did he say?

A. He said we should have to go, and he would give us the ticket to come on here, and he gave us besides that $25, so that if anything should happen on the road, we could help ourselves with. He said it was a trial between Hopkins and Dickinson and Corbin.

Re-examination:

62. Re-D. Q. To what "trouble of the first one" do you refer in your answer to X 49; was it a mechanical trouble or was it the fact of rejection?

A. The trouble that I understand was that the claim was made out for a hole and a pin, and I wanted to do away with that in the second one.

63. Re-D. Q. Why did you want to do away with it; was there any trouble in the first sash-lock if you could get it patented?

A. I done away with it on account that I didn't get any patent.

64. Re-D. Q. State whether or not the lot of the first sash-locks were sent back to the store after you substituted the flat springs for the round ones.

72 A. Yes; after I had them finished, I believe one of the boys took them down.

65. Re-D. Q. Was your attention particularly called to the precise character of what Hopkins & Dickinson wanted to secure by their second reissue?

A. I do not recollect.

66. Re-D. Q. In whose writing is the letter marked Complainant's Exhibit No. 6?

A. In McGregor's.

George McGregor, a witness, was excluded from the apartment during the taking of the testimony of George Voll, at the request of McGregor's counsel.

GEORGE VOLL.

Subscribed and sworn to before me this 11th day of May, 1876.

EDWARD E. MARVIN,
U. S. Commissioner.

GEORGE MCGREGOR, a witness of lawful age, produced by the defendants, having been first duly cautioned and sworn, in answer to the following questions and cross-questions, testifies as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is George McGregor; my age is sixty-eight years; my residence is Cincinnati, Ohio; and my occupation is a locksmith.

2. Q. Do you carry on business; if so, what business, where have you carried it on, and how long?

A. I am not carrying on business at the present time for myself, but I have carried on business thirty-eight years in Cincinnati—the business of locksmithing and bell-hanging.

73 3. Q. Were you carrying on that business during the years from 1864 to 1870; and, if so, at what place?

A. I was. The factory was in 175 Race street, Cincinnati, and I had a store in front of the factory.

4. Q. Was George Voll in your employment during any portion of that time; and if so, what portion, and in what capacity?

A. He was. He was in my employment from 1864 up till after the time that that patent was granted, some four or five months, till we had made up a lot of locks, and split and disagreed. I refer to the patent of March 30, 1869. He was foreman of the shop.

5. Q. Look at Exhibits B and C, and state whether you have any knowledge of the circumstances under which sash-locks like those shown in said exhibits were first made?

A. I have.

6. Q. State in detail what you know about it, and the circumstances, in the order in which they occurred.

A. In the first place, Robert Lee, of Cincinnati, was manufacturing sash-locks which were self-locking. I had been selling them as the best sash-lock in use, and at the time was furnishing with locks, bells, et cetera, a new house, in which I intended using the Lee sash-locks, but could not procure them from Lee at that time, on account of his not working. I mentioned the circumstances to George Voll, after which—a week or ten days—Voll showed me a working model of a sash-lock in principle precisely the same as this marked Exhibit B, and at which time I had no knowledge of its having been made, as it was made rather clandestinely. He told me then that he intended to patent it. Mr. F. A. Stokes, also a locksmith, occupied a room in the

74 factory, making fore-end patterns of wood for locks out of the usual sizes; that is to say, locks not the sizes commonly used, to be used in Marcus Feckheimer's new building. Voll employed Stokes as a suitable person to obtain the patent, and he made the application for this Exhibit B, which was rejected. After the knowledge of its rejection, I was spoken to about it, and I supposed that the arguments were not good, and sketched a reply, to be written by Stokes, mentioning each part of the sash-locks of Voll's with the several parts of the

lock which they assigned as a reason for rejection, with a view of having a re-examination by the Commissioner of Patents, which was done, and the application was again rejected. All costs attending the same was Voll's individual means.

He was discouraged at that time on account of the expense, and he then thought he would get up another that would not infringe with the locks cited, particularly with Sargent's, which had the pin. Then he produced this, marked Exhibit C. He stamped this "Patent applied for," with a view of keeping any one from getting it away from him. I sent it by express to Munn & Company, of New York, to make a search at the Patent Office and ascertain whether it was patentable, in the name of George Voll. Afterwards Voll received a letter, to my care, from Munn & Co., stating that it was not patentable. It then laid around the shop and got into a drawer in a desk of mine.

Believing this to be unpatentable, I suggested to Voll to try to get up a sash-lock a third time, and I would help him; we would get it up together, and try if we could not make improvement on the original. We went to work and made exactly the lock that was patented.

75 7. Q. You say Exhibit C lay around in a desk, after having been returned by Munn & Co. State what you know about it from the time it was in the desk to the present time, and whether both plates of Exhibit C are the same as sent to Munn & Co. and lay in the desk, as you have stated.

A. It laid in a drawer of an upright desk in my store until I got in new and larger desk, when the desk in which it was was sent out to my home in the country, and laid there for a long time, and up to the time that Lawyer Douglass asked me if I had any model of sash-locks which had been rejected. This was within a short time—within the last six months. I knew that this was in a drawer in an outbuilding in the country, and I told him that I had. I went to the drawer and found it, and brought it in to Mr. Douglass' office. Mr. Douglass sent word for me to come to his office; within a day or two I went, and saw Mr. Corbin there and then showed Mr. Corbin this article—Exhibit C—then laying in Mr. Douglass' office, and gave it to him. There is this about the striker: It is not the identical striker that was sent to Munn & Co.; but it is like it. It is the same kind, size, &c. The other one—the plate having the lever—is the identical one sent to Munn & Co.; is the only one ever made. I mean that all this Exhibit C, except the striking-plate, is the same one sent to Munn & Co.

8. Q. Did you see the first sash-lock made by Voll; and, if so, state of what it was made, whether it was mounted in any way, and what, if anything, was lacking, to make it a complete working sash-lock. I mean the lock that went with the application which was rejected.

76 A. Yes, I saw it. It was made of brass, well finished, and worked well, and was put on blocks, as Exhibit B is. It worked well, and would make a perfect sash-lock on a window, as Exhibit B.

9. Q. Do you know whether any sash-locks like Exhibit B were made other than the model you have spoken of? If you do, state fully all you know about it.

A. Yes; there were some locks made like the first model, and silver-plated, which were made by George Voll, and when I was trying them, I found the springs did not work well, and took them up to the factory and gave them to Voll to make them right, which was done, and they were sent down to the store all right.

10. Q. You say in your last answer you "took them up to the factory"; where did you take them from?

A. I took them from the store, upstairs.

11. Q. For what purpose had they been in the store?

A. They were sent down as done to be sold.

12. Q. And were they returned to the store for the same purpose?

A. Yes, sir.

13. Q. You state, in answer to question 6, that Voll received a letter to your care from Munn & Co. stating that Exhibit C sent them was not patented. Did you ever have that letter; if so, what has become of it, so far as you know?

A. I had that letter in my hands once. It was brought to my store. I took it to the factory to Voll, and there opened it and read it. I do not know what has become of it. I gave it to Voll at that time. I think I gave it to Voll.

77 14. Q. When did George Voll show you the sash-lock he first made—the one like Exhibit B? State the time as nearly as you can.

A. It was in the beginning of February, 1868, at his work-bench.

15. Q. State, as nearly as you can, the time when the sash-lock Exhibit C was completed and shown to you?

A. I think it must have been in September, 1868. It was within three or four weeks of the final rejection of his application for the first sash-lock.

16. Q. When was the third sash-lock invented—the one for which yourself and Voll received letters patent?

A. It was near the latter part of February or first part of March, 1869.

17. Q. When was it invented with reference to the date of application for a patent therefor?

A. It was immediately before; that is, as soon as it was done it was sent right off to Washington.

18. Q. Do you know how many sash-locks like Exhibit B were made?

A. There was in number not to exceed a dozen and a half.

19. Q. State as nearly as you can when these were made?

A. In July—June or July, 1868.

20. Q. State, if you know, why none were not made?

A. We had not received the patent papers, and thought we would wait until we received them before we went into it very much.

21. Q. You say, "We thought we would wait until we received the patent papers." Who do you mean by "we"?

78 A. Voll was to do the work and was to receive the patent in his own name, and I did not want to put him to work at them if he did not get a patent.

22. Q. Look at Exhibit 6 and tell me whose handwriting the body of it is?

A. Mine.

23. Q. You say in Exhibit 6, "I am now at the establishment where Mr. Voll is working, and read your letters and papers to him." Can you tell what "papers" are referred to?

A. That must have been the papers for us to sign for the reissue.

24. Q. State whether at the time of writing that letter, Exhibit 6, you understood that the specification for the reissue covered the principle of the sash-lock first made by George Voll, like Exhibit B.

A. We considered the first and third the same. It was for the purpose of covering the first lock that we sold to them.

25. Q. What was for the purpose of covering the lock you sold to them?

A. The signature asked for.

26. Q. Which was the lock you sold to them?

A. The third lock, which was patented.

27. Q. State whether you understood that if you signed the specification for the reissue it would be a claim on your part that you were a joint inventor with Voll of the first lock like Exhibit B?

A. By no means; I had no such idea.

28. Q. In your answer to question 24 you say, "It was for the purpose of covering the first lock that we sold to them." Did you ever sell more than one lock, or more than one patent for a sash-lock, to Hopkins & Dickinson?

A. No, sir.

79 29. Q. Do you know whether George Voll ever manufactured, or attempted to manufacture, any sash-locks like Exhibit B after his application for a patent therefor was finally rejected?

A. No, sir; he never did.

30. Q. Do you know whether George Voll made any further effort to get his cash-lock, like Exhibit B, patented after the rejection of the application referred to in this deposition?

A. He did not that I know of. I have not the least idea that he did, and the circumstances are all against believing that he did.

31. Q. What circumstances were against it?

A. In the first place, his first application was rejected, and he tried it again, and then it was rejected, and that settled it completely in the minds of both at that time, and the further reason that Voll commenced to get up the second one.

32. Q. State whether, about the time of the first rejection of Voll's application for a patent upon a sash-lock like Exhibit B, you heard him declare his purpose either to go on and make further effort to secure a patent or give it up—if either, which?

(Objected to as incompetent.)

A. He said he would try to get up something that would not come in competition with Sargent's little bolt—would do it by a lever or something. He produced Exhibit C.

33. Q. Look at the article now shown you, and state what it is.

A. It is Robert Lee's (of Cincinnati) patent sash-lock, the one referred to by me in my deposition.

The article shown the witness put in evidence, and marked Exhibit E, E. E. M., Comm'r.

80 Cross-examination:

34. X Q. When Hopkins & Dickinson asked you to sign the application for the last reissue, were you willing to do so?

A. Not at the moment I received it.

35. X Q. Did you become willing to afterwards?

A. I will have to explain and go into this matter: I received a letter from Hopkins & Dickinson. I glanced over it, and as soon as able I went to see Voll on the subject, and took the letter and papers to Voll at the shop where he was working. After reading the papers to Voll, he remarked that we had signed for one reissue, and he was indifferent about it. Then he began to say that Hopkins was to have given him a thousand dollars, and he only got five hundred dollars, and that we had sold it too cheap, and that Hopkins & Dickinson ought to make it up to us on account of their getting such a profitable patent the amount he was to have given him—one thousand dollars—and that I ought to have the same if they wanted us to sign them papers; "and

you tell them so by letter"; and here is the letter, Exhibit 6. I have not been willing—no, of course not.

46. X Q. You were willing to sign if you were paid for it, weren't you?

A. We would have signed the paper if he had come up to the mark and paid us a thousand dollars a piece, which was the original price.

37. X Q. If he had paid you five hundred dollars, you would have signed that application, would you not?

(Objected to, as not being a cross-examination of anything upon which defendants had examined the witness in chief.)

A. Yes.

81 38. X Q. Had you not sold your share in the original patent to Hopkins & Dickinson for five hundred dollars?

(Objected to as irrelevant.)

A. I had.

39. X Q. And did you not accept five hundred dollars in full payment for your share in the patent?

A. I did.

40. X Q. Before writing the Exhibit 6, did you ever make a claim on them for any further payment for the original patent?

A. No, sir.

Redirect examination:

41. R. D. Q. Did you receive any answer to letter Exhibit 6?

A. I got a letter to send the papers back.

42. R. D. Q. Did you ever refuse to sign the papers for a reissue, except so far as may be gathered from letter Exhibit 6?

A. That is the only time; that letter is the only refusal.

GEO. McGREGOR.

Subscribed and sworn to before me, this 11th day of May, A. D. 1876.

EDWIN E. MARVIN,
U. S. Comm'r.

82 United States circuit court, district of Connecticut. In equity.

THE HOPKINS AND DICKINSON MANUFACTURING Company
vs.
PARKER & WHIPPLE COMPANY AND H. J. P. Whipple.

THE SAME
vs.
P. & F. CORBIN ET AL.

Proofs for final hearing on the part of the defendants in the above matter taken before E. G. Thompson, one of the standing examiners of the U. S. circuit court for the southern district of New York, and special examiner herein by consent, under and pursuant to the 67th rule in equity, as amended.

NEW YORK, *July* 28, '76—11 a. m.

Met pursuant to notice and consent.

Present, Charles E. Mitchell and O. H. Platt, esqs., of counsel with the defendants, and Charles F. Blake, esq., of counsel with the complainant.

83 E. S. RENWICK, a witness produced on the part of the defendants, being duly sworn, in answer to interrogatories propounded by Mr. MITCHELL, says:

1. Q. What is your name, age, residence, and profession?

A. E. S. Renwick; I am 53 years of age; I reside at Milburn, New Jersey; my place of business being in the city of New York; I am by profession a civil and mechanical engineer; but for many years past, I have been engaged almost exclusively in acting as expert in the trial of patent causes and in soliciting patents.

2. Q. Have you read and do you understand reissue letters patent No. 6693, dated October 11, 1875, to the Hopkins & Dickinson Manufacturing Company, as assignee of George McGregor and George Voll, for an improvement in sash-locks?

A. I have read a Patent Office copy of the reissue patent mentioned in the question, and believe that I understand its contents.

3. Q. Have you examined and do you understand the specification and drawings of the rejected application of George Voll, filed February 6, 1868, and represented by Defendants' Exhibit A, E. E. Marvin, U. S. Commissioner?

A. I have.

4. Q. Please examine Defendants' Exhibit B, E. E. Marvin, Commissioner, and state whether or not the same correctly exhibits all the parts shown in the drawings and described in the specification of said rejected application.

A. I have examined the Exhibit B, referred to in the question, and find that it correctly exhibits all the parts shown in the drawings, and described in the specification of the said rejected application.

84 5. Q. Will you now compare Exhibits A and B, referred to in the last two questions, with said reissue letters patent, with reference to the question whether they embody the invention set forth in said reissue, giving your reasons for your conclusions?

A. The determination of the question whether or not the Exhibits A and B embody the invention set forth in said reissue, depends upon the scope which is given to the language of that instrument; as, under one construction of the language, Exhibits A and B describe and represent the entire invention set forth in said reissue, while under another construction they do not. Thus, upon examining the said Exhibits A and B, I find that each of them contains a vibrating lever, which is identical with the vibrating lever described and recited in the claim of said reissue.

In each of said Exhibits A and B, the vibrating lever is provided with a bolt which is identical with the bolt described and recited in the claim of said reissue. In each of said exhibits there is a striking-plate or hook, with which the said vibrating lever is combined, but the striking-plate or hook of the exhibits is so constructed as to be connected with the sash-rail by two screws parallel with each other, while the striking-plate of the said reissue is so constructed as to be connected with the sash-rail by two screws which are at right angles with each other. In both of the exhibits, and in the mechanism of the said reissue, the bolt of the vibrating lever is made to lock the bolt by engaging with something connected with the base-plate upon which the lever is pivoted, but in the said reissue the engagement of the bolt is effected with a special device, called a catch-segment, which is a projection extending upwards from the surface of the base-plate, is a device having no
85 other office than to receive the engagement of the bolt, and is neither the base plate itself nor the stump or hub upon which the

lever vibrates. In the said Exhibits A and B the engagement of the bolt is effected in a socket of the hub upon which the lever vibrates. In Exhibits A and B the base-plate is identical with the base-plate described and represented in the said reissue.

If the operation of the devices be compared, it appears that the movement of the vibrating lever of Exhibits A and B, the movement of the bolt thereof, the combination of the lever and bolt with the striking-plate or hook, the construction by which the lever carrying the bolt is pivoted upon the same base-plate that supports the device with which the bolt catches or engages, are all identical with the operation of the corresponding parts of the said reissue. Hence, it appears that if the language of the said reissue be construed so as to restrict the combination recited in the claim to the employment of the special device called a catch-segment, which is a supplemental device that projects upwards from the base-plate separately from the hub of the vibrating lever, and if the parts of the combination are not merely to operate substantially as described in said reissue, but are to be substantially as specified, then I should say that the mechanism described and represented by said Exhibits A and B do not embody the improvement recited in said reissue, because, although the mechanism of the said Exhibits A and B contains a device (the socketed-hub) with which the bolt of the vibrating lever can engage, and although the said mechanism has the lever carrying the bolt pivoted upon the same base-plate that supports the catch device for the bolt, yet it does not contain the peculiar catch-device called
86 a catch-segment recited in the claim, nor does it contain any catch-device which is supplementary to the base-plate and the hub of the vibrating lever. The mechanism of said A and B also has a striking plate which differs in form and in its capacity for being connected with the sash-rail from that represented in the drawings of said reissue. If, therefore, the striking-plate or hook recited in the claim of said reissue is not merely to operate substantially as specified, but is to be substantially the same part as is represented in the drawings of the said reissue, then, as the mechanism of said A and B has a striking-plate or hook which differs in the feature above mentioned by me from that of the said reissue, the said Exhibits A and B do not embody the entire improvement recited in the claim of the said reissue on account of the said difference.

If, on the other hand, the language of the said reissue be construed so as to include the engagement of the bolt with a locking device of the base-plate, without restriction to such locking device being the catch-segment or projection described in the said reissue, and also to include the employment of a striking-plate or hook which is like that represented in the drawings of the reissue in all respects, except the form of the plate by which it is connected in the sash-rail, then the mechanism of said A and B contains the entire invention of said reissue.

6. Q. Have you examined Defendants' Exhibit C, E. E. Marvin, com'r? If so, please state whether or not the same embodies the subject-matter of invention described in the said reissue and specified in the claim thereof, giving your reasons for any opinion you may express.

A. I have examined the said exhibit, and I find that my answer
87 to the question depends upon the construction of the language of the said reissue, and the scope which is given to it. Thus, upon examining the said Exhibit C, I find that it has a vibrating-lever which is substantially identical with that of the said reissue. It has also a locking-device which accomplishes the same purpose as he bolt of the said reissue; moreover, the lever of said exhibit carries the locking-device

as the lever of the reissue carries the bolt; but the locking-device of said Exhibit C is of the kind commonly called a latch, while the locking-device of the said reissue is of the kind commonly called a bolt; the former being constructed to vibrate upon a pivot, and the latter being constructed to slide endwise. The said Exhibit C has also a striking-plate or hook, which is combined with the vibrating-lever in the same manner as the striking-plate of said reissue is combined with the vibrating-lever thereof; but the form of the striking-plate of said Exhibit C differs from that of the said reissue in the same respect as that of Exhibits A and B differ. The said Exhibit C has, further, a catch segment formed upon the plate upon which the lever is pivoted, which catch-segment and its projection from the said plate are substantially identical with the catch-segment of the said reissue.

Upon comparing the operation of the two mechanisms, I find that they are substantially identical as respects the engagement of the vibrating-lever with the striking-plate, and the locking of the vibrating-lever by the engagement of the locking device with a projection from the base-plate which is supplemental to that plate, and to the hub upon which the lever vibrates.

88 If, therefore, the scope of the language of said reissue is made broad enough to include a combination, having substantially the same mode of operation as the combination of said reissue, without restriction to the peculiar locking-device called a bolt, and without restriction to the form of the striking-plate or hook, then I am of opinion that Exhibit C embodies substantially the entire improvement recited in said reissue. If, on the other hand, the parts recited in the claim of said reissue are not merely to operate substantially as specified, but are to be substantially as specified; the locking device required being a sliding-bolt as described and represented, and as distinguished from a vibrating-latch; and the striking-plate or hook being as represented in the drawings of the patent, as distinguished from being of a different form; then I am of opinion that the said Exhibit C does not embody the improvement of the said reissue, because its locking device is a vibrating-latch instead of a bolt, and its striking-plate or hook is of different form from that represented in the said reissue.

7. Q. Will you now compare the reissue in question with the original patent to McGregor and Voll, No. 88318, already in evidence and marked Defendant's Exhibit D, E. E. Marvin, commissioner—and inasmuch as said original patent is not present at this examination, you may use for said purpose a copy of specification and claim found in a certified copy of the file wrapper and contents in the matter of said original letters patent—and state whether or not they state and describe the same invention?

A. My answer to the question depends upon the meaning of the language contained in it. If it amounts to asking whether all the

89 parts recited in the claims of the reissue are found described and represented in the original patent, then my answer would be in the affirmative; but if the question amounts to asking whether the combination required by the claim of the reissue, is the same substantially as that required by the claim of the original patent, as to asking whether the combination recited in the claim of the reissue is recited as the invention in any part of the specification of the original patent—I answer in the negative, because I find that in the original patent the combination recited in the claim contains one member which is not made an essential ingredient of the combination recited in the said reissue. The member to which I refer is the case D, which is recited as

an essential member of the combination recited in the said original patent, but is not mentioned as a member of the combination in the claim of the said reissue. I further find that if the striking plate of the combination recited in the said reissue is not restricted to being substantially as specified by reference to the drawing, then the combination recited in the said reissue differs from that recited in the claims of the original patent, because it is required in the said original patent that the parts shall be as shown and described for the purpose specified; and, upon reference to the specification of the original patent, I find the following language, which is material, viz:

"To the rail B is secured a striking-plate, or catch, H, of the form shown in Fig. 5. By making it in this form, it is secured both to the top and side of the meeting rail of the upper sash, the screws entering at right angles to each other, thus securing it firmly." The whole of the language thus quoted is not found in the reissue, and in fact,
90 there is no description whatever in the said reissue of said striking-plate except the drawing and the following words, viz: "And Fig. 5, a perspective view of the hook, or striking-plate."

8. Q. Please compare Complainant's Exhibit No. 5 and Complainant's Exhibit No. 3, the same being the alleged infringing articles, with said reissue, and state whether or not said exhibits, or either of them, embodies the invention recited in said reissue, and give your reasons therefor.

A. The determination of the question depends upon the construction which is given to the language of the said reissue; because there are certain parts of each of the said Exhibits 3 and 5 which have the same effect in a sash-lock as parts described in said reissue; but if the parts recited in the claim of the said reissue must not only operate substantially as specified, but must be substantially as specified, then I am of opinion that the said two exhibits, 3 and 5, do not embody the combination recited in the claim of the said reissue.

Thus, upon comparing Exhibits Nos. 3 and 5, with said reissue, I find the following similarities and differences: In each there is a vibrating lever of some kind; in each there is a locking device of some kind, for the purpose of securing the lever in the position for fastening the sash; but the locking device of the said reissue is a bolt moving endwise, while the locking device of Exhibits 3 and 5, is of the kind commonly called a latch, because it vibrates in engaging and disengaging. In each there is a striking-plate of some kind, which is combined with a vibrating lever; but the striking-plate of the reissue is of a peculiar form, as represented in the drawings at Fig 5; the operation of this form being that the screws which secure it to
91 the sash-rail may be at right angles with each other, whereas the form of the striking-plate of Exhibits 3 and 5, is such that the securing screws are parallel with each other. In each there is a catching device of some kind with which the locking device can engage; but in the reissue such catching device is a catch-segment, which projects upward from the base-plate, and is a device supplemental to both that base-plate, and to the hub upon which the lever vibrates; whereas, in the said exhibits 3 and 5, the catching-device is a socket in the base-plate itself, itstead of being a device supplemental or additional thereto. In each there is a base-plate, to which the vibrating lever is pivoted, but in the said reissue the said base-plate has a catch-segment formed upon it as a projection from its upper surface; whereas, in Exhibits 3 and 5, the base-plate has no projection from its upper surface, but is formed with a socket in which the latch which secures the vibrating

lever can engage. In each the operation of the parts is such that the vibrating lever is locked fast by the engagement of a locking-device with a catching device, either connected with or forming a part of the base-plate.

If, therefore, the combination recited in the said claim may be construed to include a combination of parts, which produces the same effect in locking the sash, and in holding the vibrating lever, as the combination of said reissue, but without restriction to the peculiarities of the parts of which the combination is composed, then I am of opinion that the said Exhibits 3 and 5 embody the combination of the said reissue.

If, on the other hand, the combination recited in the claim of said reissue is one in which the parts not only operate substantially
92 as specified, but are also characterized by "being" substantially as specified, then I am of opinion that Exhibits 3 and 5 do not embody the combination recited in the said claim, because each of said exhibits has a latch instead of a bolt; because the striking-plate of each of the exhibits is of a different construction from that of the latter, and this construction is attended with a different arrangement of the screws by which it is secured in place; and because each of the exhibits does not contain the "latch-segment formed upon the plate upon which the lever is pivoted;" the words "formed upon the plate," requiring, as I understand them, that the catch-segment shall be (as described in the said reissue) a projection "which rises up from the base-plate," as distinguished from the base-plate itself.

9. Q. Have you read the testimony of George McGregor and George Voll, heretofore taken in this case before E. E. Marvin, commissioner, at New Britain, May 10th and 11th, 1876?

A. I have.

10. Q. Suppose the reissue letters patent in question were so construed as to include the mechanism declared by said Voll and McGregor to be their joint invention, but to exclude the mechanism shown by their testimony, and by the rejected application of George Voll (Exhibit A) to have been the invention of George Voll alone—would said reissue, so construed, cover either of the mechanisms constituting the alleged infringing sash-locks, and give your reasons for any opinion you may express?

A. If the reissue be construed as stated in the question, it would not cover either of the mechanisms represented by Exhibits 3 and 5; and for the following reasons: The only features of the mechan-
93 ism of the said reissue which could under such a construction be the joint invention of Voll and McGregor, are the features or peculiarities in which the mechanism of the said reissue differs from Exhibits B and C. Now, I find that the mechanism of said reissue differs from Exhibits B and C, first, in reference to the locking-device of the vibrating-lever, which in said reissue is composed of a bolt moving endwise, engaging with a "catch-segment," which is "formed upon the base-plate," or, is in other words, "a projection," "which rises up from the base-plate," according to the reissue, as distinguished on the one hand from a locking-device, such as that of Exhibit B, which is composed of a bolt moving endwise, engaging with a socket of the hub of the lever upon the base-plate, and on the other hand from a locking-device such as that of Exhibit C, which is composed of a vibrating lever engaging with a catch-segment formed upon the base-plate. Second, in reference to the construction of the striking-plate, which in said reissue is of such form that it is secured both to the top and side of the meeting-rail of

the upper sash, the screws entering at right angles to each other, as distinguished from a striking-plate, which is of such form as to be secured only to the top of the said rail, the screws entering parallel with each other.

Hence, in order that the Exhibits 3 and 5 should contain the joint invention of the said Voll and McGregor, those Exhibits must contain either or both of the said two peculiarities or differences; whereas, I find that neither of the said two Exhibits 3 and 5 contains either of the two peculiarities of the said joint invention.

94 And being cross-examined by Mr. BLAKE, says:

11. X Q. Leaving out of consideration the Voll rejected application, and the testimony of McGregor and Voll, have you any doubt that the reissue is valid, and that the defendants infringe?

(Objected to as calling for conclusions of law.)

A. Leaving out the consideration mentioned, I have not only grave doubt of the validity of the reissue, and of infringement by the defendants, but I have good reason to believe that the defendants do not infringe, if the language of the claim of the reissue be construed as I believe to be correct.

12. X Q. You mean that the claim of the reissue is broader than the invention described in the original patent, do you?

A. In one sense it is broader, and in another sense it is not; and I make this statement without taking into consideration the testimony as to Exhibits A, B, and C. Thus, the invention recited in the original patent is restricted, among other things, to a combination of which the case D is an essential member or ingredient, the other members of the combination of the original patent corresponding with the members of the combination of the reissue. Now, the combination of the reissue does not require as a characteristic feature of it the case D, and therefore includes only five members of the combination of the original patent instead of the six required. Hence, if a sash-lock were made containing the five members recited in the reissue, it would not be covered by the claim of the original patent, although it would be covered by the claim of the reissue. In this sense the reissue patent is broader than the original. While on this point, I may further state that in the reissue the device called the case D of the original patent is referred to
95 merely as a matter of convenience, as appears by the language in the said reissue commencing with the words: "In order to render the manipulation more convenient."

The sense which I had in view when saying that in another sense the reissue is not broader than the original, was this: I find that every member which is recited in the claim of the reissue patent is described in the specification and represented in the drawing of the original patent. If, therefore, it be assumed that McGregor & Voll invented everything that is described and represented in the drawings of the original patent and all sub-combinations thereof less in number than the one composed of the six members recited in the claim, then I am of opinion that the reissue is not broader than such assumed invention.

13 X Q. Do you regard case D, as described in the original and reissued patent, as being one of the operative parts of the mechanism of the sash-lock?

A. I do.

14 X Q. What is its functions?

A. Its function is to hold and protect the springs, by means of which the vibrating lever is restored to its unlocked position after the bolt is

drawn. If the sash-lock was made without this case, the spring would be exposed, and be liable to injury, from which it is protected by the case. I have answered the question without having the claim of either patent in view when making my answer.

15 X Q. Do you think a sash-lock wouldn't work without the case D?

A. No; I think a sash-lock without the case D would work, but would not be as good a sash-lock for use as one having the case D.

96 16. X Q. Do you find in the drawings and description of the reissue the case D?

A. The case D is not mentioned by that name in the reissue. It is represented in the drawings, and the only mention of it that I have been able to find in the specification is in the paragraph before referred to by me, commencing with the words, "In order to render the manipulation more convenient." In this paragraph occur the words "a cavity," which I understand to be the case D, described and recited in the claim of the original patent.

17. X Q. But in both the original and reissue, the vibrating lever, the bolt, and the striking-plate, the catch segment, and the base-plate are combined and operated in the same way, whether the case D be there or not?

A. They are, and they do up to a certain point; but the case D performs a function relatively to the other parts in the original, which is spoken of only as a matter of convenience in the reissue.

E. S. RENWICK.

Sworn and subscribed to before me this July 28th, 1876.

E. S. THOMPSON, *Examiner.*

Adjourned to new notice by consent.

97 *Complainant's proofs.*

United States circuit court, district of Connecticut.

THE HOPKINS & DICKINSON MANUFACTURING Company
vs.
PARKER & WHIPPLE CO. AND H. J. WHIPPLE.

SAME
vs.
P. & F. CORBIN ET AL.

Proofs for final hearing in rebuttal, taken before E. G. Thompson, one of the standing examiners of the court for the southern district of New York, under and pursuant to the 67th rule in equity, as amended.

NEW YORK, *Feb.* 15, 1877—2 p. m.

Met pursuant to notice and consent.

Present, counsel as before.

Counsel for complainant offers in evidence copy of English letters patent granted to William Weild, dated July 26, 1843, number 9614, and marks the same Exhibit English Patent. Also letters patent of the United States, dated May 11, 1858, granted unto Brockseiper & Sargent, and marks the same Complainant's Exhibit Brockseiper & Sargent Patent.

Complainants give notice that they rest.

98 *Stipulation.*

United States circuit court, district of Connecticut. In equity.

THE HOPKINS & DICKINSON MANUFACTURING Company
vs.
P. AND F. CORBIN & COMPANY.

SAME
vs.
PARKER & WHIPPLE Co. AND H. J. WHIPPLE.

It is hereby consented and agreed by and between counsel for the respective parties herein, that the letter offered in evidence by the complainants, and marked Complainants' Exhibit No. 6, E. E. M., Com., which is now lost, was in substance as follows, i. e.:

That it opened with some statement regarding the low figure at which the patent had been sold in the first place; then alluded to the value and profit it had been to the purchasers, with some intimation that Mr. Voll hoped Mr. Hopkins would pay additionally if the patent proved valuable; and closed with a statement that one set of reissue papers had been already signed by the writers (McGregor and Voll), and that they ought not to be required to sign any more for nothing, and then made a direct offer that they would sign the reissue papers then presented to them upon the payment of five hundred dollars apiece.

The letter was signed by both Mr. Voll and Mr. McGregor.

CHARLES F. BLAKE,
Sol'r for Complainants.
MITCHELL & PLATT,
Sol'rs for Defendants.

NEW YORK, *Aug.* 14, 1877.

And on said 29th day of September, A. D. 1878, the said cause was fully argued by the counsel of the respective parties before said circuit court, & on the 30th day of January, A. D. 1878, the following opinion of court was filed therein, viz:

99 Circuit court of the United States for the district of Connecticut.

HOPKINS AND DICKINSON MANUFACTURING Company
v.
P. AND F. CORBIN, FREDERICK H. NORTH, and Charles Peck.

SAME
v.
PARKER AND WHIPPLE COMPANY, AND H. J. P. Whipple.

SHIPMAN, J.:

These two cases are separate bills in equity, wherein the defendants in each case are charged with an infringement of reissue letters patent, dated October 11th, 1875, and issued to the plaintiffs, as assignees, by mesne assignments, of George Voll and George McGregor. The original patent to Voll and McGregor was dated March 30th, 1869.

The invention his an improved sash lock or sash fastener. An
100 ordinary form of sash lock consists of a base plate fastened to the top rail of the lower sash, a striking plate or hook plate fastened to the top rail of the upper sash, and a vibrating lever, which is pivoted upon the base plate, and which engages with each plate so as to prevent either sash from being opened.

In the invention which is described in the reissue, a bolt is mounted in and moves with the vibrating lever, which bolt slides backward and forward in a line parallel to the axis of the lever. When the lever is in proper position, as the bolt slides forward it shoots beyond a catch segment or projection upon the base plate, so as to hold the vibrating lever and prevent it from being turned until the bolt is retracted. When the bolt is retracted, and is disengaged from the catch segment, the vibrating lever can be turned and the sash can be opened. The improvement is one form of a self-locking sash fastener, the object of which is to prevent the lever from being moved by a knife inserted between the sashes from the outside of the window.

The claim of the reissue is "a vibrating lever, provided with a
101 bolt, in combination with a striking plate or hook, and with a catch segment, behind which the bolt can pass, formed upon the plate upon which the lever is pivoted, the whole constituting a sash fastener, and the parts enumerated in the claim being and operating substantially as specified."

The defendant's devices are substantially alike; each has a base plate, a vibrating lever mounted upon the base plate; a bolt mounted upon and moving with a vibrating lever; a striker plate or hook, and a socket or depression upon the base plate so formed as to receive the bolt which moves up and down. The difference between the plaintiff's and defendants' devices consists in the fact that in the defendants' devices the bolt moves in a line perpendicular to the line of the lever instead of moving in a line parallel to the line of the lever, and engages with a socket or depression upon the base plate instead of engaging with a projection from the base plate. The defendants' bolt has a motion, and is fastened as a latch moves and is fastened.

102 The main question is that of infringement, and it is practically conceded by the defendants that the determination of this question depends upon the proper construction of the plaintiff's reissued patent. In order to construe the claim it is important to ascertain what was the actual invention of the original patentees.

A horizontally-moving bolt to lock the vibrating lever to the striker plate or hook, and a vertically-moving bolt for the same purpose, were old in the art, and are mentioned in the specification of the reissue. In each of these devices the bolt shot into a socket or depression upon the striker plate.

In January, 1868, George Voll, one of the joint patentees invented a sash lock in which a horizontally-moving bolt was received and was locked in a hole or socket in a "stump" or projection upon the base plate. Application was made by Voll for a patent on February 25th, 1868, which application was rejected on August 6th, 1868, upon the ground
103 that the invention had been anticipated in the patent of Brockseifer and Sargent, dated May 11th, 1858, one of the patents which are referred to in the plaintiff's reissue. No appeal was taken. Twelve or eighteen of these locks were manufactured in February, 1868, by Voll, and were sent to the store of George McGregor, Voll's employer. What became of these hooks does not appear.

Two or three weeks after the rejection Voll invented another sash

fastener, which consisted of a vertically-moving bolt, which engaged with a catch segment or projection upon the base plate. A completed bolt of this kind was made, and the device was sent to a firm of patent solicitors, who reported that it was unpatentable. Voll and McGregor then united their skill and efforts and invented the device which is the subject of this controversy, and for which a patent was issued to them jointly on March 30th, 1869.

The invention of Voll and McGregor was the combination of a horizontally moving bolt and a catch segment upon the base plate. It was not broadly the transfer of a known locking device and its
104 equivalents from the striker plate to the base plate. In January, 1868, Voll had transferred a socket from the striker plate to the base plate, and had connected a bolt with such socket. The second hook of Voll, viz, the combination of vertically-moving bolt and projection upon the base plate, was a second stage of the improvement. The invention of Voll and McGregor was the final one of a series of separate inventions, in which series the prior inventions were made by one person before he was joined by his associate inventor. Each invention was distinct and was separated from its successor by a completed, perfected, and operative device. The prior inventions, although they may not have been abandoned by the sole inventor, were not included by the first inventors in their joint invention. This is not the case of a joint invention, which is the result of a progressive series of steps, which were taken by the two minds assisting each other, in some degree. Neither is it the case of an invention which was completed by two acting jointly, after a series of experiments, not resulting in a perfected or an operative device, had been made by one of the inventors
105 acting alone. In such a case a court does not carefully dissect the invention to ascertain what parts of the whole were furnished by each person.

In this case Voll first invented a means of locking upon the base plate. Whether this invention was patentable or not under the claim in his application, it is not necessary to consider. He next invented another combination by which the same result was produced. It is agreed that this invention was patentable. The joint inventors thereafter invented a third device, which was the combination of Voll's horizontal bolt and catch segment. This was the only result of the joint labors and inventive skill of the two inventors.

Having thus ascertained the exact extent of the joint invention, the question next arises as to the proper construction to be given to the joint patent.

The specification which was attached to the application for a reissue, evidently contained in the description of the device the words "socket or depression," and by an amendment of the plaintiff's
106 these words were erased wherever they occurred, and "catch segment" were substituted therefor before the reissue was granted. The plaintiffs seek to have their claim so construed as to include within the patent a locking device as well by means of a socket or depression upon the breast plate as by means of a projection thereon.

The invention which was actually made by the joint patentees covers a very narrow ground. It is to be noticed that the defendants do not attack the validity of the patent, if it is confined to the joint invention. This invention was not broadly the combination of the old ingredients of socket or projection so arranged as to lock the lever upon the base plate, because that combination had been made by Voll, but it was an im-

provement upon the combination of Voll, and was subsidiary to his second invention. The joint patent, being subsidiary to the prior invention of one of the patentees, should not be extended so as to embrace the original invention. "Where a combination of machinery
107 already exists up to a certain point, and the patentee makes an addition or improvement to the machinery, he must confine his patent to the improvement" (Barrett v. Hall, 1 Mas., 447). This limitation is sustained by the language of the reissue.

If Voll had been the sole inventor and patentee of the joint invention, he might well have contended that his patent should be so construed as to embrace the different forms of locking devices upon the base-plate which he invented, if such construction was not inconsistent with the language of his claim, and if he had not abandoned to the public any particular combinations, upon the principle that "the actual invention of the party is a necessary auxiliary to the construction of the language which he has employed in describing it" (Curtis on Patents, sect. 453). But inasmuch as the joint invention was within a very narrow compass, and the devices which are now claimed to be equivalents had anticipated it, the joint invention should not be made to relate back, and include the pre-existing devices, although they were the sole inven-
108 tion of one of the joint patentees. It is impossible that one person can be at the same time the joint and the sole inventor of the same invention" (Barrett v. Hall, 1 Mas., 447).

It is not intended to suggest any modification of the well understood principle that the inventor of a combination is entitled to invoke the aid of equivalents (Seymour v. Osborne, 11 Wall., 516), but to simply assert that where an invention is merely a combination subordinate to pre-existing devices, and has been limited to such sub-combination by the language of the claim, the patentee cannot successfully insist that he is entitled to the pre-existing devices, and that this is true when one of the joint inventors of the junior invention is also the inventor of the senior invention.

Under this construction of the plaintiff's reissue, the defendants do not infringe, inasmuch as they use a vertically moving bolt in combination with a socket upon the base plate.

It is insisted by the plaintiffs that Voll and McGregor are
109 estopped to deny that they were the joint inventors of the patented invention; neither of the joint inventors have made this denial. They have each denied that they were the joint inventors of the device which their assignees seek to have protected by the reissue, but which the inventors insist was simply an improvement of the sole and unpatentable invention of one of them.

The testimony of Voll and McGregor is seriously criticized in connection with their alleged willingness to make oath, for a pecuniary consideration, to the application for a reissue, wherein the joint invention is stated so broadly as to include Voll's sole invention. I have not thought it necessary to pass upon the question of fact, as their present testimony is so corroborated by the exhibits in the case as to remove doubt in regard to the character of the sole and joint inventions.

Let a decree be entered dismissing the bill, with costs.

Charles F. Blake for the plaintiffs.

Charles E. Mitchell and Orville H. Platt for the defendants.

110 And thereafter the following decree was subscribed & entered:

Circuit court of the United States, district of Connecticut.

At a special term of the circuit court of the United States of America for the district of Connecticut, in the second circuit, held at Hartford, in the city of Hartford, on the first Monday of June, in the year of our Lord one thousand eight hundred and seventy-eight—

Present, Hon. Nathaniel Shipman, district judge.

HOPKINS & DICKINSON MANUFACTURING COMPANY
vs.
P. AND F. CORBIN, FREDERICK H. NORTH, AND Charles Peck.

Decree.

This cause having come on to be heard upon the bill of complaint herein, the answer thereto of the defendants, the replication of the complainants to such answer, and the proof, oral, documentary, and written, taken and filed in said cause, and having been argued by counsel for the respective parties:

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree as follows, viz:

That the complainant's said bill of complaint be, and the same hereby is, dismissed, with costs to the defendants, taxed and allowed to be the sum of ninety-eight dollars.

N. SHIPMAN,
District Judge.

111 I, Edwin E. Marvin, clerk of the United States circuit court for the district of Connecticut, do certify that the foregoing is a true return of the record of said court in the cause of Hopkins & Dickinson M'f'g Co. against P. & F. Corbin.

In witness whereof I have set hereto my hand and the seal of said court, at Hartford, in said district, this 20th day of August, A. D. 1878.

[SEAL.] E. E. MARVIN, *Clerk.*

(Indorsement on cover:) No. 241. The Hopkins and Dickinson Manufacturing Company, appellant, vs. P. & F. Corbin, F. H. North, and Charles Peck. Connecticut C. C. U. S. Filed 9th October, 1878.

REC. 241—4

SUPREME COURT OF THE UNITED

No. 241.

THE HOPKINS AND DICKINSON MANUF
COMPANY,

vs.

P. AND F. CORBIN, F. H. NORTH, AND CHARLES

APPEAL FROM THE CIRCUIT COURT OF THE
THE DISTRICT OF CONNECTICUT, AND

BRIEF FOR APPELLANT.

WETMORE, JENNER & THOMPSON,
Solicitors for

EDMUND WETMORE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

THE HOPKINS & DICKINSON MANUFACTURING COMPANY,
Appellant,

AGAINST

P. & F. CORBIN ET AL.

In Equity.

Brief for Appellant.

Appeal from a decree of the Circuit Court of the United States for the District of Connecticut, dismissing the bill of complaint.

The suit was brought for the infringement of certain reissued Letters Patent for an improvement in sash locks, numbered 6,693, and dated October 11th, 1875. The said patent was originally issued to Voll and McGegor, as inventors, and is held by the complainant by assignment.

The errors claimed appear from the following statement and points:

The whole controversy turns upon the question whether a certain novel feature of the improved sash lock is covered by the patent to the joint inventors, or is to be excluded therefrom on the ground that so much of the invention had been previously invented by one of the patentees alone, and dedicated to the public.

Facts.

In the years 1868 and 1869 George Voll was foreman for George McGregor, of Cincinnati, locksmith, who also sold sash locks. (fols. 69 to 73).

McGregor, prior to February, 1868, had been sell-

ing a self-locking sash lock made by Robert Lee, of Cincinnati. (vol. 73).

This sash lock belonged to a class of sash locks the general construction and operation of which is as follows: A lever pivoted upon the top rail of the lower sash, when moved to a position across and at right angles with the division line between the two sashes, engages with a catch upon the bottom rail of the upper sash. This catch if, as has generally been the case, it consists essentially of a simple hook, under the projection of which one end of lever remains, when in the locking position, is sufficient to prevent the opening of the window by any direct pressure on the sashes exerted in the ordinary way employed to open the window, unless such pressure should be enough to break the lock; but, in the case supposed, there would be nothing to prevent pushing the locking lever aside by inserting a thin blade, or similar instrument, from the outside, between the sashes. To prevent this, various devices had been used to hold the locking lever, when in the locking position, so that it could not be moved sideways, from the outside, but only from the inside by disengaging it from the catch in the ordinary process of unlocking.

This particular object was accomplished, in the sash lock of Robert Lee, by giving the lever a certain amount of play upon its pivot, so that when it was turned to the locking position, its end not only passed under the catch, but also, by virtue of the sliding motion on its pivot, behind a lip on the catch, thereby forming, with the latter, a latch which prevented its sidewise movement, and was accordingly termed self-locking. As is common in most or all sash locks, the pivoted locking lever was secured to a bed plate fastened upon the sash frame, called the base plate, and the catch to a similar plate upon the other sash frame, called the striking plate (Exhibit E, fol. 79, Q. 33).

McGregor being unable to supply himself with the Lee sash lock for a particular order, mentioned

the circumstance to Voll (fol. 73), and a few days afterwards Voll produced a model of a sash lock, self-locking, but differing from Lee's in these principal particulars.

The locking lever was pivoted upon a stump upon the base plate. In the front of this stump was a hole. A pin extended from the outer end of the locking lever to the stump, through the interior of the lever, in the direction of its longitudinal axis, and was pressed by a spiral spring against the stump. When the locker was turned around into the locking position, the end of the pin, by the action of the spring, entered the hole by a horizontal motion, and thus the lever was prevented from turning sidewise. Motion in a vertical direction was prevented in the usual manner by the end of the lever passing under the catch on the striking plate. When it was desired to unlock the lock, the pin (the end of which projected for the purpose) was pulled back out of the hole, and the lever turned sidewise into its unlocking position (fol. 49).

It will be observed that the differences, in this construction, from Lee's sash lock, consist principally of two, viz.:

First. The catch to prevent a sidewise motion is a pin and hole, instead of the end of the lever forming a latch with the lip of the catch on the striking plate; and,

Second. This catch, to prevent the sideways motion, is arranged on the *base* plate, on the same sash with the locking lever, instead of on the *striking* plate, on the sash, with a catch to prevent the vertical motion.

This sash lock was made about February, 1868, and during that month a patent therefor was applied for by Voll. The specification was rather inartificially drawn by one Stokes, a locksmith and fellow workman of Voll (fols. 63, 73, 74). It described the parts and operation of the lock, but only claimed "the pin, F, operating in hole in stump, A,

" preventing the fastener from being turned, as de-
" scribed and set forth " (fol. 49).

This claim was rejected on reference to a patent for the above-mentioned Lee sash lock, and to a certain patent to Brockseiper & Sargent. The latter showed a pin or bolt working vertically through the end of the locking lever into a hole in the striking plate (fol. 40). This device, it will be noticed, like Lee's, did not form the engagement which held the lever in its locking position on the *base* plate, upon the same sash which carried the lever, but upon the *striking* plate upon the other sash.

McGregor wrote a letter to the Commissioner, on Voll's behalf, pointing out the differences between the sash lock sought to be patented and Lee's, and the Brockseiper and Sargent devices, but the rejection of Voll's claim was reaffirmed (fols. 52, 53).

The final rejection took place in August, 1868 (fol. 53).

After the application and before the rejection Voll made about a dozen and half of these sash locks, which were altered in some respects after they were made, to suit McGregor (fols. 65, 69). They were taken to McGregor's store, but what became of them did not appear (fol. 103). The arrangement between Voll and McGregor in respect to these locks was that "Voll was to do the work and was to receive the patent in his own name, and I" (McGregor) "did not want to put him to work at them if he did not get a patent."

After the rejection Voll modified the sash lock by omitting the hole and pin feature, and inserting a pivoted piece at the outer end of the lever, which worked vertically, by a flat spring, locking the lever as before by an engagement on the base plate.

(Defendant's Exhibit C.)

He made a working model of this, showed it to McGregor, and McGregor sent it to Munn & Co., of New York, to make a search and ascertain if it was

patentable in the name of George Voll. Munn & Co. replied that it was not patentable (fol. 74).

McGregor then suggested to Voll to get up a sash lock a third time, and undertook to assist him. Together they produced a sash lock in which the pin or bolt and spring was used, as in the first form, but instead of the stump and hole, a "catch segment," being a projection from the base plate, was introduced. When in the locking position, the bolt shot behind this segment and prevented the locking lever from moving sidewise (fol. 75—fols. 21 to 24).

A patent was granted to McGregor and Voll as inventors of this sash lock March 30th, 1868 (fol. 33).

July 1st, 1870, McGregor and Voll sold their patent, and the invention thereby secured, to the complainants for one thousand dollars (fol. 70).

The complainants reissued the patent.

The original specification described by letter references the separate parts of the sash bolt and their operation, and had the following claim: "In a sash bolt the arrangement and combination of the base-plate C, with the segment *c* thereon, case D, spring-bolt F, arm G, and catch H, as shown and described for the purpose specified" (fol. 36).

In the reissue the descriptive part of the specification is amended by pointing out the peculiar novelty and value of that feature of the combination whereby the whole locking of the lever is made by its engagement on the base plate—the same plate to which the lever is pivoted—in distinction to having the engagement made on the striking plate on the other sash, and the claim is in these words:

"A vibrating lever, provided with a bolt, in combination with a striking plate or hook and with a catch segment, behind which the bolt can pass, formed upon the plate upon which the lever is pivoted, the whole constituting a sash fastener, and the parts enumerated in the claim being and operating substantially as specified" (fol. 24).

The model and drawings are the same in the original and the reissue.

The decisive question in the case, and already referred to, is this:

The defendants contend that the feature of the combination patented to McGregor and Voll, which consisted in the arrangement of the parts so that the lever should be locked on the base plate to which it is pivoted, instead of to the striking plate, was a part of the invention made solely by Voll, before any contribution to the combination was received from McGregor, and was a complete invention by itself—that is, as the defendants claim, a reason for excluding that feature from the patent issued to McGregor and Voll, as not embraced in the joint invention therein described.

The complainants contend that that feature, whether or not it originated with Voll alone, constitutes an essential part of the joint invention and is embraced in the patent for said invention issued to McGregor and Voll.

The Court below sustained the view taken by the defendants, and in this the complainants respectfully contend there was error, for the following reasons:

First.

On the evidence, it must be held that the invention of the sash lock for which the patent was issued to Voll and McGregor, March 30th, 1869, began with the model made by Voll in February, 1868, and was not complete until the application for that patent. All that was done in this interval by either party towards devising or constructing the said lock until it first reached a successful form, and was patented, related to but one invention, and that invention was the combination of devices exhibited in the sash lock for which the patent issued.

This statement is supported by the following considerations:

1. The proof required to limit or invalidate the patent to the joint inventors by showing that the invention it describes has been, in whole or in part, previously invented by one of the inventors themselves singly, is at least as much as would be required to prove that the invention described in the joint patent had been, in whole or in part, previously invented by some third person.

Applying this standard in this case, would the rejected application, the alleged dozen and a half locks which had disappeared, the model submitted to Munn & Co., any or all of these circumstances together amount to the full and preponderating proof the law requires, as sufficient to establish the existence of a complete and perfected invention, in order to anticipate a subsequent patent?

The appellants contend that under the familiar rules applied to this class of cases, the evidence would be insufficient for that purpose.

The rejected application was not of itself proof of prior invention.

This is settled law.

The N. W. Fire Extinguisher Co. vs. Phila. Fire Ex. Co., 6 Off. Gaz., 34.

Nor was the rejected application supplemented by any sufficient evidence that a practical working sash lock was made at that time by Voll alone. Voll and McGregor state that Voll made a dozen and a half of this kind of sash lock. There is no proof that they were ever used or sold, or actually fitted to a window. The case does not fall even within the extreme rule of *Coffin vs. Ogden* (18 Wall., 120), for in that case there was full proof of the actual use of the anticipating lock upon a gate. These dozen and a half specimens disappeared and no trace or evidence concerning them is offered. If they had ever been used, or third persons had

seen them, or they had been practically tested, there could be no difficulty in producing evidence of these facts. Yet if they were successful, they would naturally have been tested upon a window or used or tried or exhibited, and the absence of such proof creates a presumption against their practicability and completeness. The attempt to make the locks was abandoned, as well as the attempt to patent them.

This was not an abandonment to the public or a completed invention. The circumstances preclude any reasonable supposition that such an invention was for a moment entertained by either Voll or McGregor; they were abandoned as an incomplete and unsuccessful experiment, and a fresh attempt immediately made in the same direction.

The only proof whatever to show that the locks were capable of use, though not actually used, was the statements to that effect made by Voll and McGregor themselves. But Voll and McGregor appeared as witnesses hostile to the plaintiffs, to whom they had sold their patent; testifying in derogation to their own grant; and admitting on the stand that they had been ready and willing to join in the application for the reissue; and thereby have sworn that they were joint inventors of the very thing, of which by their present testimony they disclaim the joint invention, if they had been paid five hundred dollars apiece for so doing, and which they demanded, and the complainant properly declined to pay (fols. 80, 81). The unsupported statement of such witneses as to the practical character of a few isolated sash locks, which disappeared more than twelve years ago, given under a strong bias and strongly contradicted by the circumstantial evidence in the case, is not sufficient to prove that Voll, at the time of the rejection of his application for a patent, had made a perfected invention capable of actual practical use upon the window sashes of a house.

The burden of proof lies upon the defendant to establish this alleged prior invention of Voll. On the foregoing state of the proof they have failed to do so.

Wood vs. Cleveland Rolling Mills Co., 4 Fish., 550, 560.
Pakham vs. Am. Button Hole Co., 4 Fish., 468.

As to the second model made by Voll, it was a mere model, laid aside and forgotten; there is no proof that it was ever intended to be anything more than a model. It was cast aside and abandoned, as one failure in a series of experiments, and never passed beyond the experimental stage. It is well settled that a model is not such an embodiment of an inventive conception as to amount to a completed invention.

Stilwell, &c., Co. vs. The Cincinnati, &c., Co., 7 Off. Gaz., 829–833.
Johnson vs. McCullough, 4 Fish., 170, 175.

Says the Court in the first case cited: "If the making of the model constituted invention, I should hold that the proof established the fact that James Armstrong was the prior inventor; but that does not constitute invention."

All that has been said in reference to the testimony of Voll and McGregor, and the other testimony respecting the unsuccessful sash locks made at the time of the rejected application, applies to the second model. The proof is insufficient to establish that the abandoned model was the embodiment of a complete working sash lock. Part of the model has been preserved, and other parts being substituted which Voll and McGregor testify are the same as the original parts, it is claimed that an inspection of the exhibit is sufficient to show that it is a practical working sash lock. We contend the contrary. By the warping of window frames and other causes, a sash lock in actual use is subjected to very

severe strains, and is for that reason peculiarly liable to have its action deranged. This is common experience. It cannot be predicted by an unskilled person whether or not such lock, apparently operative, is fit for actual use, and even the opinion of a skilled person on the point would be liable to errors. There is no such opinion in this case except the opinion of the discredited witnesses. There is a failure on the part of the defendants to sustain the burden of proof thrown upon them. It is in this point that, as the appellants respectfully contend, the learned Judge in the Court below erred in his estimate of the testimony. He concluded that the first and second attempts at making the sash lock resulted on each occasion in a complete and perfected invention, and that these two inventions were abandoned to the public.

This conclusion seems to overlook the fact that the testimony offered to prove that the two alleged prior inventions were perfected. is, for the reasons above-stated, insufficient, and that the circumstances militate against abandonment to the public of any novel feature contained in the two prior unsuccessful experiments, which appeared in the finally successful form in which the lock was patented.

Disregarding the question at what stage of the invention McGregor joined his labors to those of Voll, and assuming that Voll's conceptions which he contributed to the joint result were prior in time to McGregor's, the most natural, consistent and obvious interpretation of the testimony is, that from the beginning of the attempt to make the automatic self-locking sash lock in February, 1868, when Voll made the first model, until something over eleven months after, when the sash lock was finally completed in a successful form and patented, all that was done in respect to said lock constituted a series of connected experiments, forming merely the successive steps to the final invention, and that no complete invention was made by any one until the making of the sash lock described in the patent, and

all that was learned by or remained from said experiments that was actually new and useful in the sash lock, was never intended to be abandoned, and was not abandoned, but was intended to be included in the patent finally granted.

Second.

If the two models made prior to the final sash lock were experimental steps merged in the final invention, as above contended for, then it is immaterial whether these experiments embodied the conceptions of Voll alone, to which the conceptions of McGregor were afterwards added in making the final invention of the combination patented to both.

The reasons for this are as follows:

The statute does not use the word joint invention or joint inventors at all. (Act 1836 sec. 6; 5 Stat., 117 ch. 357). It simply permits one patent to two or more inventors. The statute is satisfied if each inventor contributed something to the invention and to the subject of the patent. It does not require that every part of the invention should be the joint conception of all the inventors. Each inventor may solely devise distinct and even separate parts or features of a combination which is the result of their joint labors and for which a joint patent may properly issue.

In the present case, for example, the feature of the combination which consists in so arranging the parts that the lever shall lock on the base plate may have been the sole conception of Voll, and the idea and embodiment of the curved segment on the base plate the sole conception of McGregor; yet the whole combination forming the sash lock described and patented and embracing both these features was their joint invention. This is not inconsistent with the self-evident proposition that a patent cannot be issued to two for

what was in fact the invention of one, or *vice versa*, but simply, that where two have contributed to create a combination of parts and devices forming together a single invention and the subject of a patent, it is immaterial what part or parts that go to make up the whole are the separate contributions of the several inventors and the results of their sole and unassisted thought.

This being so, it is obviously immaterial in what order of *time* the devices are produced or conceived of, which are contributed by the several inventors to the joint result—whether simultaneously or successively—and, therefore, even if Voll was the sole conceiver of the idea of having the lever lock on the base plate, and conceived and embodied this before McGregor had made or conceived of the devices, parts or features which he (McGregor) contributed to the joint result, that circumstance is immaterial, and that feature originating with Voll, was part of his contribution to the final combination, and embodied therein and constitutes part of its novelty.

Carter vs. *Perry*. 8 Off. Gaz., 518, 520.
Re Tieman, 11 Off. Gaz., 1.
Chase vs. *Chase*, Com. Dec.,16 June, 1873.

"Joint invention," says the Commissioner of Patents in *re* Tieman, above cited, "rarely consists in the joint conception of each particular device, but of the combination of devices separately conceived by the individual inventors."

Third.

The evidence does not support the allegation that McGregor did not intervene as an inventor, until after the first two experimental sash locks, although, for the reasons above stated, it is immaterial at what stage of the invention McGregor contributed his share to the final result. The fact appears to be

that McGregor overlooked, suggested, controlled and took part in the work from the beginning. Voll was McGregor's workman throughout and in his pay. McGregor first suggested that he wanted a lock, self-locking, as a substitute for the Lee sash lock (fol. 73); he experimented with the first unsuccessful models and had their defects remedied (fol. 69, 76) he directed the abandonment of that experiment (fol. 78); in a written argument he explained the device to the Patent Office in the attempt to get a patent for it (fol. 51); he conducted the correspondence with Munn & Co. in reference to the second model (fol. 74); throughout he refers to the getting up the lock as an arrangement in which it was at first proposed that the patent should be taken out in Voll's *name* (fol. 78), indicating by the form of expression that McGregor had some interest in the invention, and as the proof discountenances the idea of any assignment between Voll and McGregor, that interest would most reasonably be supposed to be that of joint inventor.

Fourth.

The patentees, Voll and McGregor, are estopped of record from alleging that they are not joint inventors of the invention set forth and described in their patent. The feature of the lever locking on the base plate as part of the conbination, is set forth and described in the patent and properly included in the claim thereof, as is admitted, unless that feature had been previously invented and was a known fact in the prior state of the art, in which event, and which event only, the patent must be limited so as to exclude that feature as part of the novelty of construction and arrangement to which the claim refers. But the single and only fact in the prior history of the art by which the limitation is sought to be given to the patent, is the

alleged fact that this feature was the prior sole invention of Voll, and a sole invention alleged to have been made within less than a year previous to the date of the joint patent, so that the right to patent that feature had not been lost.

When Voll and McGregor therefore swear that the principal novel feature which distinguishes the sash lock patented to them was the prior sole unpatented invention of Voll, and that feature is accordingly excluded from the joint patent, they are swearing contrary to their oath upon which the joint patent was issued.

If the defendants are not technically estopped by the grant of the joint patent, they cannot establish a prior sole invention of what would otherwise be covered by the joint patent, simply by the oaths of the joint patentees. And except for the color attempted to be given to the acts occurring in the early stages of the invention by the oaths of the joint patentees, they have no proof in support of their attempted derogation and limitation of the joint patent.

Fifth.

It was substantially admitted in the Court below, and it must be admitted, that if the foregoing positions are well taken the complainants are entitled to recover. There is no question that, if the valuable novel feature of the arrangement of the parts so as to have the locking lever lock on the base plate was included in the joint invention, then the reissue must be so construed as to include the defendant's sash lock, which only differs from the patented lock in immaterial features, the principal of which is that the bolt or pin which automatically locks the locking lever moves horizontally in the patented sash lock and vertically in the defendant's. The defendants' witness expressly admits the infringement if the reissue be construed

so as to include this, the only novel feature in the sash lock which gives it any value.

Also, if this feature was included in the joint invention the reissue is valid, and for the same invention as the original. There is no injection of new matter of invention. The same model and drawing are referred to, and the same structure and operation are described in both, the only difference being that the reissue, with greater particularity and clearness, points out and explains a feature clearly within the scope of the intention of the original specification, but not adequately therein described. Neither does the fact that the Patent Office insisted on the omission of the words "socket or depression" from the reissue and the substitution of the words "catch segment" affect the case. If the socket or depression is the equivalent of the catch segment, then the words are unnecessary; if not equivalent, then they are not allowable. If the construction of the reissue for which the appellant contends is correct, then it is plain that socket and segment are equivalents.

Sixth.

The equity of the case is with the complainants.

The facts may be briefly summed up as follows:

The sash lock to which the patent referred, and which it describes had, as a novel and valuable feature of its structure, the arrangement and construction of its self-locking device, whereby the locking lever was locked on the *base* plate, instead of forming its locking engagement on the *striking* plate. This was a new device. No pretense is made that it was anticipated, unless it was anticipated by the alleged sole invention of Voll. So far as the public knew, or the complainant in purchasing Voll and McGregor's patent knew, that feature appeared absolutely for the first time in the Voll and McGregor sash lock. If the patent does not cover this feature, it is obviously reduced to a

point that makes it worthless. The complainants intended to buy, and supposed they were buying, the exclusive right to make *that* sash lock, with all its novel features. They supposed the patent covered all those features. In that belief they paid a substantial price—one thousand dollars—for the patent. Voll and McGregor supposed they were selling them that sash lock, including all its novel features. McGregor admits as much in his testimony (fol. 78, p. 35, 24 Q.). Voll and McGregor intended to cover those novel features, and all of them, by their patent. The contrary supposition is not credible. Can it be for a moment believed that if Voll and McGregor were *now* the owners of the patent, they would not vehemently protest against the least intimation that the original models made by Voll, so far as they showed the feature of the locking lever locking on the base plate, constituted his sole invention and had been abandoned to the public, and that so far as that—the most valuable feature of the patented combination—was concerned, they never intended their patent to cover it?

The complainants are advised by counsel that the specification is insufficient clearly to secure them the invention they have bought and paid for, and they accordingly prepare the papers for a reissue to cover this defect. They apply to the inventors to sign the papers for the reissue, which was usual and proper. Voll and McGregor perfectly understand the reissue, especially McGregor, the employer and spokesman. It is impossible to read his evidence and his argument to the Patent Office, showing an entire familiarity with the nicest distinctions relating to the invention, and have any doubt on this point. With that understanding they were perfectly willing to sign the papers, and both so testify (see fol. 70, x-Q. 55; fol. 80, 37 x-Q.), but thought by refusing to do so they could exact five hundred dollars apiece—a demand which under any possible state of the facts was a dishonest demand.

This payment is properly refused, and then the

inventors come and attempt to nullify their own grant by swearing that they sold to the defendants a piece of property for a thousand dollars, *less* the very thing that gave it its value, and a piece of property which, if it was in reality the mere remnant of the invention, which they now claim it was, they well knew they could not have sold at all.

To give a construction to the patent which supports an act of such injustice as this, and based upon facts resting on doubtful proof, is to impose upon it an interpretation in violation of the reasonable probabilities of the case, and which will be, if possible, avoided. The defendants have not made out a case which supports such an interpretation, and the appellant respectfully submits that the judgment below should be reversed.

EDMUND WETMORE,
Of Counsel for Appellant.

Supreme Court of the United States.

SUPREME COURT U. S.
FILED
JAMES H. McKENNEY, Clerk

NUMBER 241.

IN EQUITY.

HOPKINS AND DICKINSON MANUFACTURING COMPANY,
APPELLANTS,

vs.

P. & F. CORBIN, ET AL.,

BRIEF FOR APPELLEES.

O. H. PLATT, C. E. MITCHELL.
Of Counsel for P. & F. Corbin et al., appellees.

NEW BRITAIN:
PRESS OF ADKINS PRINTING COMPANY.
1881.

Supreme Court of the United States.

No. 241.

HOPKINS AND DICKINSON MFG. COMPANY,
APPELLANT,

vs.

P. & F. CORBIN, F. H. NORTH, AND CHAS. PECK.

BRIEF FOR DEFENDANTS IN ERROR.

This bill of complaint is brought upon reissued Letters Patent No. 6,693, issued to plaintiffs as assignees of Letters Patent originally granted to George McGregor and George Voll, on the 30th day of March, 1869, [number 88,318] for an improvement in sash locks.

Before calling attention to the specific defenses set up in the answer, and to the evidence to sustain them, it is thought best to present in the form of a brief narrative the succession of events intimately connected with the invention, and culminating in the grant to Voll and McGregor of the original patent of March, 1869.

In 1868 Robert Lee, of Cincinnati, was making the self-locking sash locks represented on Plate I. Similar sash locks had before been manufactured in a great variety of forms.

H. B. Renwick Dep., fol. 57, p. 25.
McGregor Dep., fol. 73 and 74, p. 33.

Prior to Feb. 19th, 1868, George Voll, of said Cincinnati, then in the employment of George McGregor, a locksmith of that place, by his unassisted effort and invention produced a sash lock, represented upon Plate I.

See Exhibit A., fol. 46, p. 21.
" Voll Dep., fol. 64, Quest. 13, p. 29.
" McGreg. Dep., fols. 73 and 74, Quest. 6, p. 33.

As appears by the drawing, the sash lock consisted as a whole of a base plate mounted with a vibrating lever, and a striking plate provided with a hook with which the vibrating lever engaged to fasten the meeting rails of the sashes together. Upon this vibrating lever is mounted a bolt which slips into a socket located upon a base plate when the vibrating lever is engaged with the striking plate, the bolt thus holding the lever in the locked position so that the sashes cannot be opened until the bolt is retracted. The distinguishing features of this

Voll sash lock were, including the elements borrowed of Lee:

First—The base plate, upon which the vibrating lever is mounted, and which has a socket upon it;

Second—The vibrating lever mounted upon this plate;

Third—A bolt mounted upon the vibrating lever;

Fourth—A striking plate or hook; and

Fifth—A socket formed upon the base plate,—these parts being so combined that when the vibrating lever is properly engaged with the striking plate or hook, then the bolt can enter the socket formed upon the base plate in such a manner that the vibrating lever cannot be moved out of engagement with the striking plate until the bolt is retracted. Plate II.

This sash lock is also represented in Defendant's Exhibit B., and is shown and described in the rejected application next to be alluded to.

On the 19th day of February, 1868, Mr. Voll applied for Letters Patent for this sash lock [received at the Patent Office Feb. 24th, 1868], as appears by "Exhibit A.," the same being "a true copy of the file wrappers and contents and drawings in the matter of the application of George Voll, filed Feb. 24, 1868—and rejected—for sash lock."

This application was rejected. This rejection was acquiesced in, and the attempt to patent the sash lock invented by George Voll was permanently abandoned.

Geo. Voll Dep., fol. 68, Quest. 37, 38, p. 31.
Geo. McGregor's Dep., fol. 79, p. 36.

The sash lock used as a model was a complete working sash lock [Voll, fol. 64, p. 29; McGregor, fols. 75 and 76, p. 34], and was fixed upon two blocks, like "Exhibit B.," and fully tested. [Voll, fol. 64, p. 29; McGregor, fols. 75 and 76, p. 34.]

Not long after his application, and before the final rejection, Voll made a small lot of these sash locks, finished in silver plate, which, in full working condition, were sent down to the store of McGregor for sale.

Voll Dep., fols. 65, 67, 71, 72, pp. 29–32.
McGregor Dep., fol. 76, p. 34.

Voll being discouraged at the rejection, and supposing from the references given by the Patent Office that the bolt or "pin" and socket feature of his lock infringed the Sargent sash lock by containing a "pin" entering a "hole," abandoned his invention, as we have stated, and went to work to devise a sash lock which should not contain the "pin" and "hole" features. This effort resulted in the production of the sash lock represented in Plate III.

See Voll's Dep., fols. 65, 66, 67, pp. 29, 30.
" McGregor's Dep., fols. 74, 75, p. 34.

In this lock the pin or bolt is absent and the "hole" or socket is absent. This sash lock is represented also by "Exhibit C.," the same being the identical lock made by

Voll, with the exception of the striking plate, which is an exact reproduction.

This sash lock was sent to Munn & Company to be patented and came back with the report that it was not patentable.

McGregor Dep., fol. 74, p. 34.
Voll, Dep., fol. 67, p. 30.

Believing this lock to be unpatentable, McGregor then suggested to Voll to try a third time to get up a sash lock and said *he would help him*. They went to work and made the improvement in sash locks patented to George Voll and George McGregor, in the original of the reissue upon which this suit is brought. This sash lock is represented in Plate IV.

McGregor Dep., fol. 74, p. 34.
Geo. Voll Dep., fol. 69, p. 31.

This sash lock was patented as stated. In its nature it is an improvement [See McGregor, fol. 74, p. 34], upon the sash lock originally invented by George Voll, and the claim of the patent is a very clear statement of *the joint* invention or improvement.

This claim is as follows, the italics being our own:

> "*In a sash lock*, the arrangement and com-
> "bination of the base plate C. with the *seg-*
> "*ment* c. thereon, case D., spring *bolt F.*, arm
> "G. and catch H. as shown and described for
> "the purpose specified."

This patent for the jointly invented improvement upon Voll's original invention, was sold by Voll and McGregor to the plaintiffs.

McGregor's Dep., Quest. 26. p. 36.

By the plaintiffs it was reissued, and upon the reissue obtained by them, this suit is brought, the claim of the reissue being:

> "A vibrating lever provided with a bolt in "combination with a striking plate or hook, "and with a catch segment, behind which the "bolt can pass, formed upon the plate upon "which the lever is pivoted, the whole consti- "tuting a sash fastener, and the parts enumer- "ated being and operating substantially as "specified."

This claim the defendants are alleged to infringe by the manufacture and sale of sash locks, represented by Plate V., and also by complainants' Exhibits 3 and 5. In these locks the vibrating lever carries a pivoted latch which latch is provided with downward projection entering a hole or socket in the base plate.

To this claim we reply:

1. *We do not infringe when the claim is legally construed.*

2. *If the claim be construed so as to cover the defendant's sash locks, then it is void.*

(a.) *as being the invention of Voll, singly and not Voll and McGregor;*

(*b.*) *as being for a different invention from that for which the original patent was granted;*
(*c.*) *as abandoned to the public after rejection by the Patent Office.*

I.

WE DO NOT INFRINGE WHEN THE CLAIM IS LEGALLY CONSTRUED.

If indeed the mere fact that our combination produces the same *effect* in locking the sash, and in holding the vibrating lever makes us infringers, then we have nothing more to add under this issue.

E. S. Renwick, fol. 91, p. 42.

But this is not in accordance with law.

Fuller and Barnum, *vs.* Yentzer and Scates, Off. Gaz., p. 551.
Burr *vs.* Duryee, 1. Wall., 570.
Seymour *vs.* Osborne, 11. Wall., 549.

On the other hand if, (as the law requires,) the contrivances must be substantially alike as mechanisms, in order to infringe, then we do not infringe.

Mr. E. S. Renwick, the expert of the defendants, is exceedingly clear upon this point.

E. S. Renwick, fols. 91, 92, pp. 41, 42.

From this testimony and from inspection, it appears that defendants do not use the bolt "which shoots *by* the *segment*," nor "the *catch segment*" *behind* which the bolt can pass: Therefore they do not infringe.

But the defendants claim that they are not limited to a sash lock containing their special devices, but may cover a device like the defendants', in which a rocking latch operates in connection with a depression, which like Voll's original socket, is located upon the base plate that supports the vibrating lever.

That they made a strong effort before the Patent Office to obtain a reissue of this broad character, without success, is apparent from the following letter in evidence, in which they abandon that effort, and practically disclaim what their assignee now seeks to cover.

"In the matter of the application for Reissue
"of Letters Patent granted to McGregor
"and Voll.
"Filed August 20, 1875.

"*Improvement in Sash Locks.*

"AMENDMENTS.

"*Hon. Commissioner of Patents,*
"SIR: We hereby amend the specification,
"in the above entitled matter, as follows:

"In the second line from the bottom of page "2, erase the words 'socket or depression,' and "substitute therefor the words 'catch segment.'

"Erase the words 'socket or depression' at "the top of page 5, and substitute the words "catch segment.'

"Erase the words 'into the depression,' 8th "line, page 5, and substitute 'by the segment.'

"Erase the word 'socket,' line 21, page 5, "and substitute 'catch segment.'

"Erase the words 'depression or socket,' line "7, page 6, and substitute 'place behind the "catch segment.'

"Erase the words 'socket into,' line 17, page "6, and substitute 'catch segment behind.'

"Erase the word 'enter,' line 18, page 6, "and substitute the word 'pass.'

"HOPKINS & DICKINSON MFG. CO.,
"By Asso. Atty., WM. C. McINTIRE."

See Record, p. 17, fol. 37.

But if it be claimed that despite the care and effort of the Patent Office, in striking out the coveted words "socket" or "depression," and the foregoing letter of amendment and disclaimer, there still is "matter" in the reissue which will operate impliedly, by construction, to give the plaintiffs what the Patent Office evidently refused to give in terms, [the patentee acquiescing] the reply is ready: *The Patent Office has not signally failed*

of doing what it attempted. For, referring to the reissue, we find the statement of invention as follows:

> "The improvement herein described, upon "these sash fasteners, consists in arranging the "'*catch segment*,' &c."
> Fol. 22, p. 10.

Again the *catch segment* c. is thus described:

> "A *projection* c. rises *up* from the base "plate" [fol. 23, p. 10.]

Again, "When the lever is at right angles with the "position shown in Figs. 1 and 2, the end of the "bolt rests against the vertical face" [of the *catch segment* rising up from the base plate,] (fol. 23, p. 10.)

Again, "The *catch segment* which receives the bolt "when shot being, as thus described, on the base "plate upon which the lever is pivoted, it is evi- "dent that the bolt which is mounted upon the "lever will always shoot *by the segment* when the "lever is in the proper position, &c." (fol. 23, p. 11.)

And nowhere in the reissue is it suggested that the result can be accomplished otherwise than by a "bolt" in *some way mounted so as to utilize a "catch segment."*

If now we examine the original patent [a lawful resort for this purpose] we shall not find a suggestion that Voll

and McGregor were jointly the first to embody the principle of locking on the base plate. *For aught that appears in the original patent, a hundred inventions might have preceded their own, which in one and another form, embodied this principle.*

It is nowhere suggested, even, that this principle has any advantage.

From the statement of invention in the original patent, no one would dream that it consisted in locking upon the base plate, as opposed to locking upon the strike plate.

The claim states clearly all that the specification describes or alludes to, as the invention of Voll and McGregor, when it says:

> "What we claim as new, and desire to secure "by Letters Patent, is" [not locking on the base plate irrespective of the character of the locking device;] but "In a sash bolt, the "arrangement and combination of the base "plate C. *with the segment c.* thereon, case D., "*spring bolt F.*, arm G., and catch H., as shown "and described for the purpose specified."

That any device was ever invented by them, which did not contain the catch segment c. is not suggested. Why is it that the Patent Office in the original patent, and in the reissued patent, in resisting the persistent effort of the present plaintiffs *to broaden their* patent, so persistently insist that the "catch segment c.," shall

be an element, and a "socket or depression" shall *not* be an element?

The narrative we have given is an obvious answer: George Voll alone invented [so far as one can be said to invent a principle] the principle of locking upon the base plate, and he embodied that principle in the form of a bolt, mounted upon a vibrating lever, entering *a socket located upon the base plate, as opposed to the catch plate.* This application for a patent was rejected, and the broad invention was abandoned. Voll then invented an improvement, which was also given up forever. He and McGregor then invented a specific locking device, to act with the vibrating lever and striking plate of the old combination, and this they patented jointly, in its connection with the co-operating parts, and *this* and *this only* was patented in the reissue, despite the plaintiffs' desire and effort to obtain a broader claim. The Patent Office knew that Voll invented what may be called "the broad claim;" and our own proposition is, that so knowing, the Patent Office succeeded in so controlling the use of language in the reissue, that when that language is read in connection with the original patent, its legal import restricts the plaintiffs to *that form* of locking device, [in connection with the other parts] which consists in a bolt shooting behind a "catch segment," the parts enumerated, *being* and operating substantially as *specified.*

Therefore we do not use the McGregor and Voll invention. Mr. E. S. Renwick's testimony in full under this issue, is found in reply to Q. 8, p. 41.

II.

IF THE CLAIM BE CONSTRUED SO AS TO COVER THE DEFENDANTS' SASH LOCK, THEN IT IS VOID.

(*a.*) *As being the invention of Voll, singly, and not of Voll and McGregor.*

Mr. H. B. Renwick in laying a basis for his opinion that the defendants infringe, gives a summary of the elements in plaintiffs' patented contrivance, making *a socket* formed on the base plate one of them. The following is from his description of the Voll and McGregor sash lock, upon which suit is brought:

> "*First*, the base plate upon which the vibra-
> "ting lever is mounted, and which has a *socket*
> "upon it, * * * * * * * and *fifth*, a *socket* or
> "catch segment, formed upon the base plate."

That is to say, there being a socket in the base plate of both the defendants' sash locks, he is obliged to find, and to his own satisfaction does find, a socket in the contrivance and claim of Voll and McGregor. For the purpose of this part of our argument, let this be granted, and what results? *Manifestly that the reissue is void, for Voll, singly, invented that which the reissue, under such a forced construction, makes the joint invention of Voll and McGregor.*

As we have already shown, precisely this thing is found in Voll's original sash lock. Above the surface of the base plate is mounted a socket or hole into which a pin or bolt shoots when the vibrating lever is engaged with the striking plate. The bolt and socket invention

then dates from that time, making it forever impossible that Voll and McGregor should jointly invent the same thing.

Our expert, Mr. E. S. Renwick, [fol. 86, p. 39] finds in exhibits "A." and "B." [the rejected application and the corresponding model], "the entire invention of the reissue," upon the broad construction we are speaking of. Of course the invention was also in the original sash locks finished and put on sale.

And Mr. H. B. Renwick is not called upon in reply. His silence is confirmation. The position that George Voll's application shows the subject matter of the broad claim is too plain for contradiction. *That improvement was the invention of George Voll*, and was not the invention of Voll and McGregor. Therefore if the plaintiffs are right and the Court is compelled to construe the reissue as including the use of a socket upon the base plate, then the patent is void.

Therefore the patent is void, as being for an invention not jointly produced by Voll and McGregor, if the broad construction of the plaintiffs is the true one.

Ransom *vs.* Mayor of New York, 1 Fisher, 252, 269.
Barrett *vs.* Hall, 1 Mason, 473.
Hotchkiss *vs.* Greenwood, 4 McLean, 462.

(*b.*) *Upon the broad construction, the reissue is not for the same invention as the original patent.*

When Voll and McGregor prepared the claim of the original patent. "In a "sash lock the arrangement and combination of the base "plate c., with the segment c. thereon, case D., spring "bolt F. and G., and catch H. as shown and described "for the purpose specified," they did not dream that they were asserting or suggesting a claim to the "principle" of locking by bolt and socket on the base plate, as opposed to the catch plate. They knew that Voll alone had invented that mechanical combination of elements, and that it had been abandoned. They knew that Voll had tried again and had invented a sash lock containing a latch, and had abandoned that too. They knew that they had then jointly invented a device in which a shooting bolt was combined with a catch segment, and this *new joint invention* they patented. The Court will search in vain for any suggestion in the original patent that they had invented anything else whatever.

Nor have Voll and McGregor ever claimed otherwise, than in accordance with our position. It is true that they agreed to sign the reissue on payment of a certain sum, [which they deemed justly their due] but the reissue claim is in terms limited to a combination, containing their "catch segment" "behind which the bolt can pass" and their "bolt." It will be too far fetched an argument, if our opponents shall indulge in it to infer from Voll and McGregor's willingness to ask for this claim, that they are willing to father also all the abominations of construction which the plaintiffs import into it. McGregor is explicit on this point [fol. 78, p. 36.]

Nor is any basis laid in the testimony for an inference that Voll was willing to attribute to McGregor a share in the first invention if he could get more pay. We repeat it, the reissue claim as it reads is limited to a "*catch segment*" device, and a plain man like George Voll would not, and could not, anticipate the pretensions which were to be based upon this reissue.

There is another aspect in which this reissue, broadly construed, is an expansion of the original invention. It industriously eliminates the case D. of the original patent from the reissued claim, and the specification places the case and spring in the category of convenient but not necessary elements. Now the law does not permit an element which, in the original patent is just as essential as any other element to be eliminated from the claim of a reissue, and set one side as a preferable construction or a convenience.

Upon this point we have a right to ask the Court to accept the testimony of Mr. E. S. Renwick as conclusive, when, as acute antagonists as our opponents in this case do not recall their experts in reply.

The case is, in this respect, "upon all fours" with the recent case of Russell *vs.* Dodge, 11 Off. Gaz., p. 152. There fat liquor, in a heated state, was an ingredient of the compound described in the original patent. The reissue sought to cover the use of fat liquors in the compound, preferably when heated; but whether hot or

cold. The Supreme Court held the Patent void. In this case the case D. is an essential feature of the original invention, performing important functions in the combination. [E. S. Renwick, fols. 95, 96, pp. 43, 44.]

But a sash lock could be made to work without the case D. [E. S. Renwick, fol. 95, p. 44.]

Therefore the plaintiffs desired a reissue, which would cover *such* a device. They eliminate the case D. from the combination claimed. In the specification, they made the spring and case, called a cavity, a mere convenience in manipulation. [E. S. Renwick, fols. 94, 95, 96, pp. 43, 44.]

There is no doubt that a vibrating lever without a case would be within the reissue claim. Voll and McGregor never invented or described or suggested, in their original patent, a way of making a sash lock without a case. Therefore this reissue is void, under this head, *whether Voll and McGregor be limited to the catch segment or not.*

But there is still another aspect of this department of our case. We set up the defense of "new matter." Just what shade of difference exists, if any, between this defense and the general defense that the reissue is for a different invention from the original, may not, perhaps, be settled. But if, as in this case, an elaborate oration can be inserted into the specification by an inventor's assignee, pointing out the advantages of a certain broad principle of construction, and intentionally conveying to the business public the impression that that broad principle was invented by the patentees and is covered by their reissue, when there is no suggestion of such an advantage in the original patent, and no suggestion there that the patentees were the first to embody it,

then it would seem that the statute prohibiting "new matter" is a meaningless use of words. Unless we fail to apprehend the letter and spirit of the statute prohibiting new matter, this reissue, however elegant as a specimen of the "fine art of reissue," is a palpable abuse of a valuable privilege.

(c.) *If the claim be construed broadly, the invention was abandoned to the public in the abandonment of the Voll invention.*

The facts upon this subject appear from the narrative. No long recapitulation of them can render them more forcible. Neither Voll, the inventor, nor McGregor, his employer, perceived any distinction, between the invention for which they sought a patent and the patented devices to which they were referred. They therefore thought it useless to attempt further to get a patent. They acquiesced in the sufficiency of the references. Therefore after making a single lot of silver plated sash locks upon the Voll plan, during the pendency of the application, and sending them to the store for sale, *they gave up forever all thought of patenting Geo. Voll's sash lock.* They allowed the application to stand rejected. No further steps were ever taken by Voll, the inventor, or McGregor, the employer. *If both invented it, both abandoned it;* and after one more invention of Voll, which in its turn was also abandoned, the two together succeeded in getting a patent upon a *catch segment* combination, which they both regarded as a patentable improvement on the abandoned contrivance of George Voll.

The statute of 1870 gave six months in which to revise the rejected application or file a new one, and declared that unless such action should be taken, the application should be abandoned. No such action was ever taken. The application was therefore abandoned, and as we have abundantly proved, the invention was abandoned also.

We have thus demonstrated the invalidity of this reissue, if so construed as to cover a device, lacking the catch segment which characterized the Voll and McGregor invention, and containing the socket which characterized the original Voll invention. The only alternative is the adoption of what we regard as the true construction, that is to say, a construction which limits the plaintiff to a combination containing the bolt and "catch segment," the whole *being* and operating substantially as specified.

[See reissue claim, fol. 24, p. 11.]

Nor need there be any regret at such a result. There is no evidence in the case showing that the plaintiffs supposed they had bought anything more than the face of the original patent imported. Indeed the fact that they did not reissue for *four long years*, goes to show that they did not suppose that they were buying anything more than McGregor and Voll's real joint inven-

tion, which the original fully described. So far as appears, it was only when the ambition seized them to suppress the invention of others, that the patent began to seem defective.

We therefore pray that the decision and decree of the learned court below may be affirmed.

C. E. Mitchell
for Appellees

